

1 (Whereupon, the following  
2 proceedings were had out of  
3 in camera.)

4 BY [!EZ SPEAKER 04]:

5 Q Now, Mr. McPhee, in your direct testimony  
6 on Page 18, Line 420 --

7 A Okay.

8 Q -- you have defined what you believe that  
9 bill and keep means; is that correct?

10 A Yes.

11 Q Now, as part of your role as the  
12 regulatory -- with AT&T, you're generally familiar  
13 with the FCC's rules and regulations; is that  
14 correct?

15 A Generally speaking.

16 Q And I've handed to you what is out of the  
17 Code of Federal Regulations. And, of course, I  
18 didn't tell you what code it was, but I'll represent  
19 to you that's it's 47. I think your attorney would  
20 probably agree with that.

21 Have you seen Section 51.713 there?

22 A Yes, I do.

1           Q     Where it says, Bill and keep arrangement?

2           A     Yeah.

3           Q     You see that.

4                     And could you just read what it says

5 under Paren A.

6           A     For purposes of this subpart, bill and keep

7 arrangements are those in which neither of the two

8 interconnecting carriers charges the other for the

9 termination of telecommunications traffic that

10 originates on the other carrier's network.

11          Q     Okay. Thank you.

12                     Now, you would agree that that

13 definition does not say that bill and keep is the

14 price of zero; is that correct?

15          A     It doesn't have those words in it.

16          Q     Okay. Thank you.

17                     Does AT&T have bill and keep

18 arrangements with other carriers?

19          A     Yes, it does.

20          Q     And you would agree that AT&T has favored

21 bill and keep arrangements in the past; is that

22 correct?

1           A     There have been times and circumstances  
2     where bill and keep is appropriate.

3           Q     And it has gone so far as to advocate those  
4     arrangements in regulatory proceedings; is that  
5     correct?

6           A     Again, when appropriate, that's correct.

7           Q     And you would agree that carriers are free  
8     to enter into any type of compensation arrangement  
9     that is lawful?

10          A     Sure.

11          Q     And, in fact, AT&T and Sprint operate under  
12     a bill and keep arrangement in the nine BellSouth  
13     states; is that correct?

14          A     That's my understanding.

15          Q     Are you aware that the Kentucky Commission  
16     recently approved the adoption by the Nextel entities  
17     of the AT&T Sprint agreement?

18          A     Not specifically, no.

19          Q     Well, generally, you're aware that the  
20     Kentucky Commission has entered an order that allowed  
21     the Nextel entities to operate under that agreement?

22          A     I'm sorry. There's a lot of Nextel and

1 Sprint proceedings going on throughout the country.  
2 And in preparation for this case, I haven't been  
3 keeping up to date on specific orders in other  
4 regions where I'm not focused.

5 Q Okay. Although, you did testify in several  
6 of the other BellSouth states; correct?

7 A That's correct.

8 Q Okay. You would agree that in the Kentucky  
9 ICA that the parties did not seek Commission  
10 adjudication of the bill and keep arrangement; is  
11 that your understanding?

12 A I'm sorry. Can you say that again?

13 Q The parties didn't submit the bill and keep  
14 arrangement to -- for arbitration in the BellSouth  
15 states?

16 MR. FRIEDMAN: You mean -- I just want to be  
17 clear because we were just talking about recent  
18 events in Kentucky. Are you back in 2001?

19 MR. PFAFF: I am back in 2001. I'm sorry.

20 BY [!EZ SPEAKER 04]:

21 Q So back in 2001, when the parties entered  
22 into the BellSouth -- again, see -- entered into the

1 ICA between Sprint and BellSouth for the BellSouth  
2 states, okay, and you have presented as -- you have  
3 an exhibit that describes the analysis --

4 A Yes.

5 Q -- of that arrangement; correct?

6 A Correct.

7 Q The issue of bill and keep and facilities  
8 sharing, those issues were not submitted to state  
9 commissions?

10 A No, I don't believe that there was a  
11 dispute between bill and keep and shared facility  
12 factors in those states because BellSouth had done  
13 the analysis and the traffic was balanced using  
14 symmetrical rates. So there's no dispute.

15 Q And so BellSouth entered into those  
16 arrangements freely and voluntarily; is that correct?

17 A Under the circumstances of those parties,  
18 that's correct.

19 Q In your testimony, you've cited to  
20 Attachment 3, Section 6.1, specifically I'm on  
21 Page 19 of your testimony.

22 A Okay.

1           Q     And you will agree that nothing in  
2     Section 6.1 states that the rate for the traffic is  
3     zero; is that correct?

4           A     Those words are not included in 6.1.

5           Q     Now, it's your position that the bill and  
6     keep provision should not be ported to Illinois; is  
7     that correct?

8           A     That's correct.

9           Q     And that the parties should charge each  
10    other a proposed rate for reciprocal compensation?

11          A     That's correct.

12          Q     What is the rate that AT&T proposes for a  
13    reciprocal compensation?

14          A     It's the FCC's ISP remand order rate of  
15    .0007 per minute of use.

16          Q     And if I refer to that as the triple 07  
17    rate, you would know what I'm -- you would agree that  
18    that's the rate; right?

19          A     Yes, it is.  Yes.

20          Q     Now, you would agree that invoices would  
21    need to be prepared -- under AT&T's proposal invoice  
22    would need to be prepared; is that correct?

1           A     For the purpose of billing reciprocal  
2     compensation?

3           Q     That's correct.

4           A     Yes.

5           Q     Okay. And those invoices would have to  
6     include the minutes of use; correct?

7           A     Yes.

8           Q     And would have to then apply the  
9     appropriate rate to those minutes of use. Do you  
10    agree?

11          A     As well as to the appropriately  
12    jurisdictionalized traffic, that's correct.

13          Q     Okay. Now, if the parties have a bill and  
14    keep arrangement, they do not need to prepare and  
15    exchange invoices; is that correct?

16          A     That's my understanding, yes.

17          Q     And so would you agree that a bill and keep  
18    arrangement -- and you would agree that's an  
19    administrative expense?

20          A     It's a cost of doing business, sure.

21          Q     Okay. And that -- it's a cost of doing  
22    business for Sprint as well as AT&T; correct?

1           A     Yes.

2           Q     Okay. And that through the entry of a bill  
3     and keep arrangement this expense could be avoided;  
4     is that correct?

5           A     Well, I can't speak to Sprint. I think  
6     that there would probably be a savings of some sort  
7     as far as paper costs, perhaps, personnel costs of  
8     putting that together. But there are other  
9     administrative costs associated with traffic, whether  
10    it's bill and keep or not.

11          Q     And you understand that parties often have  
12    disputes with respect to their invoices; is that  
13    correct?

14          A     I don't know if I'd quantify it as often,  
15    but I do know that disputes do exist.

16          Q     Disputes occur when one party sends an  
17    invoice to another party; is that correct?

18          A     Sure.

19          Q     And that if you have a bill and keep  
20    arrangement and you're not sending each other  
21    invoices, those invoice disputes would not occur; is  
22    that correct?



1           A     Sure.  Those specific invoice disputes  
2     would not exist, but there still might be other types  
3     of disputes.

4           Q     Going back to Section 6.1, you would agree  
5     that there is no arrangement that would convert the  
6     bill and keep arrangement to a reciprocal  
7     compensation arrangement with one exception, okay,  
8     and that exception is that if Sprint leaves the  
9     agreement for another agreement that pays reciprocal  
10    compensation -- and I apologize.  That was a very  
11    long and complicated sentence -- but that is the  
12    exception for the bill and keep provision.  Do you  
13    agree with that?

14          A     Within 6.1, that's correct.

15          Q     Okay.  And, specifically, there's nothing  
16    in 6.1 that requires the parties to maintain a  
17    certain balance of traffic; is that correct?

18          A     That's correct.

19          Q     Now, we've looked at -- your attorney  
20    yesterday showed the Sprint witnesses some  
21    interconnection agreements with various traffic  
22    ratios.  Do you remember that?

1           A     Yes, I do.

2           Q     Okay. And have you looked at those  
3     agreements?

4           A     I looked at them during the course of the  
5     examination yesterday.

6           Q     Okay. Now, would you agree that the  
7     purpose for the ratio was to convert the bill and  
8     keep arrangement?

9           A     Convert it from --

10          Q     Into the reciprocal compensated -- to a  
11     rate.

12          A     From what I recall, my understanding was  
13     that the contracts started under reciprocal  
14     compensation if, and only if, there was a balance in  
15     traffic as defined in those agreements for a period  
16     of three months, then bill and keep may be applied.

17          Q     Okay. So your understanding is actually  
18     then it converted from a reciprocal compensation  
19     payment arrangement to a bill and keep arrangement;  
20     is that correct?

21          A     Perhaps we should look at an example; but,  
22     generally, that was -- I recall seeing that in a

1 couple of the agreements.

2 Q Then that's fine. That answer's acceptable  
3 to me.

4 Would it surprise you to understand  
5 that -- well, strike that.

6 Are you aware of any agreements that  
7 have a ratio where it converts from a bill and keep  
8 to reciprocal compensation based upon the ratios?

9 A Are you asking me if those contracts exist?

10 Q Yes.

11 A Yeah, they exist.

12 Q And, specifically, the parties start off at  
13 a bill and keep arrangement; correct?

14 A If the traffic isn't balanced, a party  
15 would start off under certain -- if that was the type  
16 of contract they had, they could start off under bill  
17 and keep, yes.

18 Q Okay. And the provisions of the contract  
19 convert the agreement to the payment at a prescribed  
20 rate when the ratios are met; is that correct?

21 A Yes.

22 Q Okay. In your testimony on Page 18,

1 starting on Line 430, do you see that?

2 A I do.

3 Q Could you read what you said in your direct

4 testimony there.

5 A Reciprocal compensation for CMRS traffic is

6 similar though the local calling area is the major

7 trading area, MTA, where the call originates.

8 Q Could you read the next sentence, too,

9 please.

10 A If a CMRS call originates and terminates

11 within the same MTA, that call is subject to

12 reciprocal compensation.

13 Q And you understand that the major trading

14 area is generally the area where FCC licenses are

15 issued?

16 A That's my understanding.

17 Q And the -- would you agree that generally

18 speaking the MTAs are larger than exchange areas?

19 A Generally speaking, yes.

20 Q And they're generally even larger than

21 LATAs; correct?

22 A Yes.

1           Q     Are you familiar with the Chicago MTA?

2           A     Not that I can envision it, no.

3           Q     Okay.  Would you -- I'm going to represent

4     to you that the Chicago MTA also includes Peoria,

5     Springfield and Rockford?

6           A     Okay.

7           Q     Would that surprise you if that were the

8     case?

9           MR. FRIEDMAN:  I have to make a foundation

10   objection, particularly in light of the fact that I

11   don't know whether Mr. McPhee knows where those

12   places are.  So he may or may not.

13          MR. PFAFF:  I had to make a copy of a map

14   myself.  So...

15   BY [!EZ SPEAKER 04]:

16          Q     If you know where Peoria, Rockford and

17   Springfield are --

18          A     A map would be helpful.

19          Q     Okay.  Here.  And I even highlighted them.

20          [!EZ SPEAKER 04]:  So I'm going to show your

21   witness a map of Illinois.

22          THE WITNESS:  Okay.

1 BY [!EZ SPEAKER 04]:

2 Q And, again, you understand that the MTAs  
3 are pretty big and they really encompass a lot of  
4 areas; correct?

5 A Yes, I do.

6 Q Now, you've said in your testimony that we  
7 just read that wireless calls within the MTA are  
8 subject to reciprocal compensation; is that correct?

9 A Yes.

10 Q And for shorthand purposes, we'll start  
11 referring to those as intraMTA calls.

12 A Okay.

13 Q Do you understand that?

14 A Yes, I do.

15 Q So if a -- again, just assume for this line  
16 of questioning that Peoria, Springfield and Rockford  
17 and within the Chicago MTA. Okay?

18 A Okay.

19 Q If a Sprint PCS customer in Peoria -- I'm  
20 sorry. Let me set another piece of background  
21 information.

22 You understand that telephone numbers

1 are handed out under rate centers; is that correct?

2 A Yes, that's correct.

3 Q So when I refer to a Peoria telephone  
4 number, I will mean a number associated with a Peoria  
5 rate center.

6 A Right, the NPA/NXXs are associated with  
7 that rate center.

8 Q Right. So if a Sprint PCS customer with a  
9 Peoria telephone number and is located in Peoria  
10 calls a Chicago AT&T customer, you agree that would  
11 be an intraMTA call; is that correct?

12 A Yes.

13 Q And, similarly, if a Sprint PCS customer in  
14 Springfield called Chicago, that would be an intraMTA  
15 call?

16 A I'm sorry. Say that again.

17 Q If the Sprint PCS customer in  
18 Springfield --

19 A Yes.

20 Q Okay. And similarly the Sprint PCS  
21 customer in Rockford called --

22 A Yes.

1           Q     Now, if an AT&T customer in Chicago calls  
2     the Sprint PCS customer in Peoria with the Peoria  
3     telephone number, that would also be an intraMTA  
4     call; is that correct?

5           A     IntraMTA, that's correct.

6           Q     And, again, similar for an AT&T customer in  
7     Chicago calling a Sprint PCS customer in Rockford and  
8     in Springfield, those would be intra MTAs calls; is  
9     that correct?

10          A     They would be within the MTA. I don't know  
11     if they're inter or intraLATA calls.

12          Q     I understand. But I'm just -- just  
13     intraMTA.

14          A     The call would be within the MTA, that's  
15     correct.

16          Q     So we've established that it's an intraMTA  
17     call regardless of direction; correct?

18          A     That's correct.

19          Q     Now, in the example where it's the Sprint  
20     PCS customer calling the AT&T customer in Chicago,  
21     you would agree that AT&T is entitled to reciprocal  
22     compensation for that call; is that correct?



1           A     Yes.

2           Q     And similarly for Rockford and Springfield,  
3     when the Sprint PCS customers in those areas call  
4     Chicago customers, AT&T is entitled to reciprocal  
5     compensation; is that correct?

6           A     Yes.

7           Q     Now, in your testimony on Page 24 you  
8     discuss your traffic study -- and I will be careful  
9     to avoid any confidential information. But in  
10    that -- in your description of that traffic study you  
11    indicated that the study did not include  
12    long-distance traffic; is that correct?

13          A     That's correct.

14          Q     All right. And your study showed that the  
15    ratio -- would you mind, I'd like to draw a picture,  
16    if I could?

17          MR. FRIEDMAN: Please.

18          JUDGE DOLAN: Off the record.

19                                 (Whereupon, a discussion was had  
20                                 off the record.)

21    BY [!EZ SPEAKER 04]:

22          Q     Mr. McPhee, I want to go back just real

1 quickly to discuss something you mentioned earlier.

2 When you were discussing the BellSouth

3 Sprint ICA, do you recall, I asked you whether or not

4 there was anything in the confidential settlement

5 about balance of traffic being a part of that

6 confidential settlement?

7 A Yes.

8 [!EZ SPEAKER 04]: Okay. And I'm sorry because

9 we did that in confidential portion.

10 MR. FRIEDMAN: Well, it doesn't bother me. You

11 mean what you just said?

12 [!EZ SPEAKER 04]: Yes.

13 MR. FRIEDMAN: That doesn't bother me if it

14 doesn't bother you.

15 MR. HARVEY: A note in passing, we probably

16 want to go off the record for this.

17 [!EZ SPEAKER 04]: Yes.

18 [!EZ SPEAKER 05]: Yes, the very mention of the

19 thing that will not be mentioned on public record.

20 MR. PFAFF: Let me ask a different question.

21 MR. FRIEDMAN: Well, I'm sorry because I'm

22 confused. Are we off the record?

1 JUDGE DOLAN: We'll go off the record now.

2 (Whereupon, a discussion was had

3 off the record.)

4 BY [!EZ SPEAKER 04]:

5 Q I will ask you a different question,

6 Mr. McPhee. When you indicated that BellSouth had

7 made certain considerations, with respect to entering

8 into the Sprint/BellSouth agreement, is it your

9 testimony that BellSouth determined that the traffic

10 was balanced at that time?

11 A Yes, it is.

12 Q And is there anything that you have

13 presented that demonstrates that the traffic was

14 balanced?

15 A Yes.

16 Q Okay. And could you tell me what you

17 believe demonstrates that the traffic was balanced?

18 A I can point you to someplace and then I can

19 describe why it says what it says.

20 Q Okay. And are we going to get into a

21 confidential area?

22 A Yes, we are.

1 JUDGE DOLAN: We're back in camera.

2 MR. FRIEDMAN: What we're talking about is -- I  
3 think that we can do this without getting into any  
4 confidential.

5 JUDGE DOLAN: All right. Then we won't go in  
6 camera.

7 MR. FRIEDMAN: But, go ahead.

8 BY [!EZ SPEAKER 04]:

9 Q We were discussing whether or not BellSouth  
10 believes that the traffic was balanced at the time it  
11 entered into the 2001 agreement; is that correct?

12 A Yes.

13 Q Okay. Do you still believe that BellSouth  
14 believed that the traffic was balanced?

15 A BellSouth had determined that the traffic  
16 was, indeed, balanced.

17 Q Okay. And you were going to demonstrate to  
18 me why the traffic was balanced?

19 A I was going to demonstrate where I pointed  
20 it out. It's on Exhibit JSM6. At the bottom of that  
21 exhibit there is a bullet point that starts, Billing  
22 between BST and Sprint entities was balanced. Each

1 gave up billing the other and then it gives an annual  
2 number. I did some research and contacted a  
3 BellSouth employee that was a participant in the  
4 analysis of traffic volumes between BellSouth, Sprint  
5 PCS, and Sprint the CLEC. And it was, indeed,  
6 determined based on historical data for the prior  
7 year that the traffic was roughly balanced and that  
8 when -- this slide says that each gave up billing the  
9 other, that billing was done at symmetrical rates.

10 Q Okay. Well, let me ask you this question:  
11 You also understood that the -- one of the reasons  
12 that BellSouth entered into the bill and keep  
13 arrangement was because of the rates study that  
14 Sprint had presented in Florida; is that correct?

15 A I understand that that was mentioned in the  
16 contract language that Sprint had proposed one. I  
17 don't know what type of analysis was done on that.

18 Q Right.

19 And in your exhibit, the  
20 nonconfidential part indicated that the asymmetrical  
21 compensation arbitration case in Florida presented  
22 some potential additional BellSouth expense; is that

1 correct?

2 A Yes, it says that in the first bullet  
3 point.

4 Q Okay. Nothing further.

5 JUDGE DOLAN: Mr. Harvey.

6 MR. HARVEY: Just a few things.

7 MR. PFAFF: Oh, I'm sorry. Nothing further  
8 that's confidential.

9 [!EZ SPEAKER 02]: I knew what he meant.

10 MR. HARVEY: I was shocked.

11 MR. FRIEDMAN: I was thrilled.

12 JUDGE DOLAN: Okay. I was hopeful, but okay.  
13 Never mind.

14 BY [!EZ SPEAKER 04]:

15 Q We were talking about intraMTA traffic;  
16 correct?

17 A Yes.

18 Q And then I was going to ask you about your  
19 traffic study that you prepared; correct?

20 A Yes.

21 Q And you indicated in your testimony that  
22 you did not include long-distance traffic in that

1 traffic study; correct?

2 A That's correct.

3 Q And your traffic study reflected that the  
4 ratio was 57 to 43; is that right?

5 A As an aggregate for all of the entities  
6 that Sprint seeks to include in this contract, that's  
7 correct.

8 MR. FRIEDMAN: One second.

9 THE WITNESS: Just as a point of clarification,  
10 I didn't gather all the data for this traffic study.  
11 I did look at the summarization and I did contact and  
12 discuss at length the person that did the actual data  
13 acquisition. But I rely upon his experiences in data  
14 gathering for the information that's in this document  
15 that I sponsor here today.

16 MR. FRIEDMAN: Yeah, I suggested to Mr. McPhee  
17 that he make that clarification because you were  
18 saying "you," which I thought he was probably hearing  
19 as you, AT&T. And I knew that he, himself, had not  
20 prepared the study.

21 BY [!EZ SPEAKER 04]:

22 Q Well, this exhibit was prepared upon your

1 request and at your direction; is that correct?

2 A It was prepared upon my request for  
3 purposes of this proceeding.

4 Q And do you understand the data that went  
5 into the preparation of the exhibit?

6 A Yes.

7 Q And so you know how the exhibit was  
8 prepared; correct?

9 A I do, yes.

10 Q I understand you didn't go out and do  
11 actual traffic studies yourself.

12 Okay. You understand that AT&T and  
13 Sprint have a local trunk, a local interconnection  
14 facility between them; is that correct?

15 A In which state?

16 Q Well, in Illinois.

17 A There's a local interconnection between the  
18 two parties, yes.

19 Q Okay. And just -- again, just for  
20 demonstrative purposes, let's refer to this as the  
21 local trunk. Okay?

22 A Local interconnection truck would probably



1     be more accurate.

2             Q     That's fine.

3             MR. PFAFF:   For the record, I'm drawing

4     something on the board.   It's basically two circles

5     with a line between the two of them.

6     BY [!EZ SPEAKER 04]:

7             Q     Is it correct that when you performed the

8     traffic study, the traffic that was measured was the

9     traffic that was exchanged upon this local

10    interconnection trunk?

11            A     That would be my understanding, yes.

12            Q     Okay.   And, again, just so I'm clear, this

13    is a facility between the two party's switches;

14    correct?

15            A     That's correct.

16            Q     And we exchange traffic upon that facility;

17    right?

18            A     That's correct.

19            Q     Now, are you familiar with the data

20    responses made by AT&T?

21            A     Yes.

22            Q     Do you have those in front of you?

1           A     I have the original responses. I am not  
2     sure that I have if there were any subsequent  
3     responses. I know that there were some motions to  
4     compel.

5           Q     I believe this was one of your original  
6     responses.

7           A     Okay.

8           Q     Can you turn to Response 1.13, please.

9           A     Okay.

10          Q     And, specifically, the question is: Do the  
11     totals that were in Exhibits JSM4 and JSM5 include  
12     251(b)(5) local traffic directed to Sprint's wireless  
13     entities, that is 1-plus dialed and delivered by an  
14     IXC, whether or not affiliated with AT&T? Do you see  
15     that question?

16          A     Yes, I do.

17          Q     And the response indicates that the numbers  
18     listed on your exhibits do not include the traffic  
19     that is directed to Sprint's wireless entities,  
20     1-plus dialed and delivered to an IXC; is that  
21     correct.

22          A     Yes.

1           Q     So to describe this situation, okay --  
2     well, first of all, you admit that the numbers that  
3     comprise your 57/43 exclude that category of traffic;  
4     correct?

5           A     Yes.

6           Q     And I'm going to start referring to that as  
7     the intraMTA IXC traffic. And, specifically, what I  
8     mean is when an AT&T subscriber has to dial 1-plus to  
9     get to a Sprint PCS customer. Do you understand  
10    that?

11          A     I'm sorry. I didn't follow your  
12    difference.

13          Q     I'm going to describe the circumstance  
14    where an AT&T subscriber, a wireline subscriber has  
15    to dial 1-plus to get to a Sprint PCS wireless  
16    subscribers.

17          A     Okay.

18          Q     Okay. Now -- and then to take it the next  
19    step further, a call that would originate and  
20    terminate within the MTA.

21          A     Okay. Then it's intraMTA 1-plus dialed  
22    call.

1           Q     Okay. I'll refer to an intraMTA IXC call,  
2     but I consider them to be the same thing.

3           A     Okay.

4           MR. FRIEDMAN: To avoid --

5           [!EZ SPEAKER 04]: Sure.

6           [!EZ SPEAKER 02]: If there is any such traffic  
7     flowing in the opposite direction, would you also  
8     mean to include that when you say "intraMTA IXC"?

9           MR. PFAFF: No, I'm only referring to AT&T  
10    originated traffic at that point.

11   BY [!EZ SPEAKER 04]:

12          Q     And you've agreed, again, that your traffic  
13    study did not include that traffic; correct?

14          A     That's correct.

15          Q     So, again, what I'm going to describe --  
16    and I'm going to make a real big circle here. Okay.  
17    And I'm going to label this "intraMTA." Okay. So  
18    all this takes place within the MTA. Do you  
19    understand that?

20          A     Yes.

21          Q     Okay. What you've described is a  
22    situation -- well, let me give you this example:

1 Just assume for the sake of argument that for a  
2 wireline customer in Chicago to dial a wireline  
3 customer in Springfield is a 1-plus call. Okay. Can  
4 you assume that?

5 A Sure.

6 Q Okay. And, also, if that same wireline  
7 customer in Chicago dials a Sprint PCS customer in  
8 Springfield with a Springfield number, they will also  
9 be dialing 1-plus. Do you understand that?

10 A That's correct.

11 Q Okay. So in my example, we'll say this is  
12 Springfield and that is Chicago. Now, the -- go  
13 ahead.

14 A Just for clarification, there would not be  
15 a local interconnection truck between those two.

16 Q Fair enough. Fair enough.

17 And I'm going to describe -- I'm going  
18 to draw what I believe -- how I believe that call is  
19 handled. Okay?

20 A Okay.

21 Q The Chicago customer dials 1-plus. Okay.

22 AT&T takes the call to an IXC, an interexchange

1 carrier; correct?

2 A Yes.

3 Q And then the interexchange carrier delivers  
4 it on to Springfield?

5 A Okay.

6 Q Again, that all occurs within the MTA;  
7 correct?

8 A Yes.

9 Q Okay. Now, the interexchange carrier in  
10 question can be both a non AT&T affiliated carrier  
11 like Sprint Long Distance; correct?

12 A Yes.

13 Q Or it could be MCI; correct?

14 A Yes.

15 Q The old AT&T Long Distance; correct?

16 A Yes.

17 Q Okay. But it also can be -- obviously,  
18 AT&T has now acquired AT&T, the long-distance, so  
19 they're affiliated companies. Would you agree with  
20 that?

21 A They're affiliate companies. They're still  
22 treated separately.

1           Q     Okay. But it's still an interexchange  
2     carrier, in your view?

3           A     That's correct.

4           Q     But it is an affiliated company.

5                     So this IXC can be either a  
6     nonaffiliated company or an affiliated company. Now,  
7     AT&T will -- do you know when an AT&T wireline  
8     customer selects a long-distance provider, okay,  
9     that's a process we refer to as PIC; right?

10          A     Yes.

11          Q     You understand that?

12          A     P-I-C.

13          Q     You PIC your long-distance carrier?

14          A     Right.

15          Q     Do you know, generally speaking, throughout  
16     the AT&T territory, what percentage of AT&T wireline  
17     customers has also picked AT&T as their long-distance  
18     provider?

19          A     No.

20          Q     You just say you don't know; right?

21          A     I don't know.

22          Q     Okay. Again, your traffic study -- and

1 I'll draw little arrows here to demonstrate the  
2 direction of the call, okay, excludes all -- this  
3 traffic that goes through the IXC and it's delivered  
4 to Sprint PCS; correct?

5 A Yeah, that's correct.

6 Q Now, you have -- again, back in your  
7 testimony, however, you indicated back on Page 18 --  
8 you say that if a CMRS call originates and terminates  
9 within the same MTA, that call is subject to  
10 reciprocal compensation; correct?

11 A Yes.

12 Q Now, you performed this traffic study to  
13 provide AT&T's opinion as to the balance of traffic;  
14 correct?

15 A Yes.

16 Q And, specifically, you were looking for the  
17 balance of what I will call 251(b)(5) traffic; is  
18 that correct?

19 A Generally speaking, yes.

20 Q Okay. And sometimes we refer to that as  
21 local traffic, but I'm going to call it 251(b)(5).  
22 All right?



1           A     Okay.

2           Q     Do you understand that 251(b)(5) traffic is  
3     subject to reciprocal compensation?

4           A     Yes, I do.

5           Q     Now, you also indicate in your data  
6     response -- Data Response 1.02 --

7           A     Okay.

8           Q     -- you define long-distance traffic;  
9     correct?

10          A     Which bullet point is it?

11          Q     Well, that's No. A.

12          A     Okay.

13          Q     You also define 251(b)(5) local traffic.  
14     And moving to specifically Subparagraph C, do you see  
15     your answer there?

16          A     Yes, I do.

17          Q     It says that Mr. McPhee does not consider a  
18     1-plus dialed call that is originated by an AT&T  
19     enduser to a Sprint wireless NPA/NXX and that is  
20     delivered by AT&T to the endusers presubscribed  
21     long-distance carrier to be a 251(b)(5) local traffic  
22     call; is that correct?

1           A     Yes, and that's referring -- when I speak  
2     of in this answer to 251(b)(5) local traffic, I am  
3     also referring to Answer B, which is -- where the  
4     definition in here is that traffic that is subject to  
5     reciprocal compensation.

6           Q     So is it your opinion that the insertion of  
7     the IXC means that the call is not subject to  
8     reciprocal compensation?

9           A     Yes, and per the terms of the contract,  
10    that's correct.

11          Q     Well, I'm not talking in terms of the --  
12    present terms of the contract. I'm talking about  
13    generally your understanding about 251(b)(5)  
14    reciprocal compensation.

15          A     Well, I'm sorry then, could you -- can we  
16    go through this again real quickly?

17          Q     Sure. Sure.

18                   I wasn't talking in terms of any  
19    interconnection agreement.

20          A     Okay.

21          Q     I was talking in terms of the 251(b)(5)  
22    traffic under the FCC's rules and regulation that is

1 subject to reciprocal compensation. Do you  
2 understand that?

3 A Yes, traffic that's originated by one party  
4 and terminated by the other.

5 Q Okay. So is it your testimony that  
6 251(b)(5) traffic includes traffic that is originated  
7 by AT&T, sent to an IXC and delivered to Sprint PCS  
8 via that IXC?

9 A I think that call originates and terminates  
10 within the MTA, and, therefore, is subject to Section  
11 251(b)(5) for purposes of compensation for that call.  
12 However, those calls that are 1-plus dialed to an IXC  
13 are not AT&T's responsibility for the payment of  
14 251(b)(5) termination charges to Sprint.

15 Q Okay. So I understand you, you're not  
16 saying that they're subject to reciprocal  
17 compensation; correct?

18 A AT&T does not owe Sprint reciprocal  
19 compensation for 1-plus dialed calls.

20 Q You're saying that AT&T doesn't owe  
21 reciprocal compensation for that call?

22 A When it's sent to an IXC, that's correct.

1           Q     Presumably somebody else does?

2           A     There's a relationship between the IXC and  
3     Sprint PCS in that scenario where traffic termination  
4     charges would be settled.

5           Q     Now, what is the basis for your opinion  
6     that that call is not -- that AT&T does not owe  
7     reciprocal compensation on that call?

8           A     AT&T -- I'm sorry. The originating enduser  
9     caller of that call is paying subscription fees to  
10    their interexchange carrier for purposes of carriage  
11    of that call beyond the local exchange boundary.  
12    Therefore, the financial relationship for Sprint to  
13    recover their costs associated with terminating that  
14    call are now pointed towards the IXC.

15                   The IXC receives the retail rates from  
16    the customer. The IXC pays for termination -- or  
17    terminating switch access charges on that call.

18          Q     Okay. And you admit, though, that an AT&T  
19    caller is the one who placed the call; is that  
20    correct?

21          A     The AT&T enduser initiated the call to  
22    their interexchange carrier, which then carried that

1 call.

2 Q Well -- but, they don't dial the number to  
3 their IXC, they dialed a Sprint PCS telephone number.  
4 Would you agree?

5 A Sure. They dialed to their IXC by dialing  
6 "1." That initiates that relationship.

7 Q Okay. But then the ten digits following  
8 the "1" are associated with a Sprint PCS customer.  
9 Would you agree with that?

10 A Sure.

11 Q Okay. You understand that Sprint disagrees  
12 with AT&T's view on that subject?

13 A That's my understanding.

14 Q Okay. And if -- if AT&T -- and are you  
15 aware that there are opinions out of federal circuits  
16 that have indicated that the originating carrier is  
17 subject to reciprocal compensation for those calls?

18 A The originating carrier?

19 Q That the originating local exchange carrier  
20 is subject to reciprocal compensation?

21 A The originating carrier is not ever subject  
22 to reciprocal compensation. It would be the

1 terminating carrier.

2 Q All right. No -- well, let me start off  
3 again.

4 Your view is that AT&T, the ILEC, as  
5 the originating carrier, right, is not subject to  
6 reciprocal compensation for an intraMTA call to a  
7 Sprint PCS customer if it's handed off to on IXC; is  
8 that correct?

9 A I'm sorry. I would to have ask --

10 Q Boy, that's a long question. In the  
11 circumstance where AT&T originates an intraMTA call  
12 and then has dialed 1-plus, okay, does AT&T -- is  
13 AT&T obligated to pay reciprocal compensation on that  
14 call?

15 A No.

16 Q Okay. Now, when the call's reversed, okay,  
17 and a Sprint PCS calls AT&T within the MTA, is Sprint  
18 PCS obligated to pay reciprocal compensation on that  
19 call?

20 A Yes.

21 Q Okay. Do you understand that AT&T's  
22 position that it's not subject to recip -- let me

1 back up.

2 On the call where it's an AT&T  
3 customer originated call, okay, dial 1-plus to a  
4 Sprint PCS customer within the MTA, your opinion is  
5 that AT&T does not owe reciprocal compensation on  
6 that call; is that correct?

7 A Yes.

8 Q Okay. Do you understand or are you aware  
9 that several courts of appeals have decided that the  
10 originating ILEC does owe reciprocal compensation for  
11 that call?

12 A Without getting into specifics, I'm aware  
13 that, perhaps, one or two commissions have ruled in  
14 that matter. I'm not sure if "several" is the right  
15 term, but I believe there has been at least one.

16 Q Okay. And actually I asked about Federal  
17 Courts of Appeal, okay, as opposed to the  
18 commissions. Are you aware of any Federal Court  
19 Appeal decisions on this?

20 A I'd have to see documents. I'm sorry.

21 Q So AT&T is going to ask this Commission to  
22 make a determination on this issue; is that correct?

1           A     On 1-plus dialed calls?

2           Q     Correct.

3           A     I don't -- I'm not sure that we are asking

4     the Commission to make a determination on that

5     because they're not subject to reciprocal

6     compensation.

7           Q     Well, it's your view that they're not

8     subject to reciprocal compensation?

9           A     And the contract also says that, that

10    they're not subject to --

11          Q     Again, AT&T is -- you have provided a

12    traffic study that purports to show the number of

13    minutes that are subject to reciprocal compensation;

14    correct?

15          A     Yes.

16          Q     Okay. And your traffic study excluded the

17    intraMTA IXC minutes; is that correct?

18          A     That's correct. They're not considered

19    local wireless traffic subject to bill and keep under

20    this contract. So there's no reason to included them

21    in traffic studies.

22               [!EZ SPEAKER 04]: Move to strike as



1       unresponsive.

2               JUDGE DOLAN:   Sustained.

3       BY [!EZ SPEAKER 04]:

4               Q       Mr. McPhee, if the Commission determines

5       that AT&T does owe reciprocal compensation for

6       intraMTA IXC calls, okay -- again, just assume that

7       they make that determines.  Do you understand that?

8               A       Yes.

9               Q       Wouldn't you agree that that would

10       invalidate AT&T's traffic study?

11              A       In that hypothetical it would change the

12       results of that study.

13              Q       Okay.  So you would agree that your traffic

14       study would be -- would not correctly reflect then

15       the situation where AT&T's originated traffic was

16       subject to reciprocal compensation?

17              A       In your hypothetical, that's correct.

18              Q       And just your argument is that because of

19       the intervening carrier, the IXC, that that traffic

20       should be excluded from your traffic study; is that

21       correct?

22              A       That's one of the arguments, yes.

1           Q     Mr. McPhee, in your preparation in this  
2     case for your testimony, did you review other cases  
3     with respect to the issue of what traffic was subject  
4     to reciprocal compensation?

5           A     Other cases, no.

6           Q     Okay. You did not review any Commission  
7     orders dealing with AT&T's position that the intraMTA  
8     IXC traffic is not subject to reciprocal  
9     compensation?

10          A     Not specifically that I recall.

11          Q     You indicate in your work experience --  
12     starting on Line 16, do you see that?

13          A     Yes.

14          Q     Could you just read that sentence, please.

15          A     My responsibilities included identifying  
16     policy and product issues, to assist negotiations and  
17     witnessing, addressing SBC's reciprocal compensation  
18     and interconnection agreements as well as SBC's  
19     transit offering.

20          Q     And you indicate earlier that this is  
21     throughout the SBC 13-state region; is that right?

22          A     Yes.

1           Q     Okay.  And Illinois is within that 13-state  
2     region?

3           A     That's correct.

4           Q     Are you aware that in Case No. 04-0040,  
5     that the Illinois Commission ruled that the argument  
6     that the originating local exchange carrier was not  
7     subject to reciprocal compensation if it handed off  
8     the call to an intervening carrier was spurious?

9           A     Do you I recall that case?

10          Q     Yes.

11          A     I don't recall that case.

12          Q     Okay.  Are you aware of AT&T taking  
13     position that the originating carriers are subject to  
14     reciprocal compensation even for calls handed off to  
15     intervening carriers?

16          A     I'm sorry.  If you can clarify which AT&T,  
17     premerger AT&T or are you speaking of SBC premerger?

18          Q     Well, how about AT&T, the local exchange  
19     carriers.

20          A     As they exist today?

21          Q     Yes.

22          A     Not specifically.

1           Q     Well, were you involved in the case in  
2     Wisconsin titled 05-TI1068, that's titled  
3     Investigation on the Commission's Own Motion into the  
4     Treatment of Transiting Traffic?

5           A     I don't believe I was an active participant  
6     in this one.

7           Q     And, again, although it's -- part of your  
8     responsibilities included SBC's transit traffic  
9     offering?

10          A     Prior to June 2003, that's correct.

11          Q     You've been handed what is AT&T's brief in  
12     that proceeding. Do you see that?

13          A     Yes.

14          Q     Would you have been involved in developing  
15     AT&T's policy position?

16          A     Generally speaking, my level of involvement  
17     has ebbed and flowed over time. But I have generally  
18     kept tabs on it, if nothing else, to see what the  
19     current policies are.

20          Q     Can you turn to Page 26.

21          A     Okay.

22          Q     And do you see midway down the page --

1 well, first of all, do you see Section 6?

2 A Yes, I do.

3 Q Okay. And midway down the page there is a

4 citation that says, CEG Western Wireless, LLC, versus

5 Boyle. Do you see that case cited? It's in italics.

6 A WWC License, LLC?

7 Q Yes.

8 A I see that, yes.

9 Q Okay. And do you see the parenthetical

10 under that case?

11 A It begins with "D"?

12 Q Yeah, actually the parenthetical after

13 "unpublished."

14 A Okay. I see that.

15 Q And could you read what that says, please.

16 A Sure.

17 It says, Holding that under the FCC's

18 decisions originating carriers must pay compensation

19 to terminating carriers under the reciprocal

20 compensation provision of the 1996 Act whether or not

21 the call was delivered via an intermediate carrier.

22 Q Okay. And you understand this is a

1 position that AT&T Wisconsin took in that proceeding;  
2 is that correct?

3 MR. FRIEDMAN: Objection. Foundation.

4 Again, two points. One is you've just  
5 referred the witness to a citation without reference  
6 to any particular context and a parenthetical  
7 characterizing a decision.

8 But the other is, that again, if  
9 Mr. McPhee has not seen this before, had nothing to  
10 do with this case, had nothing to do with developing  
11 AT&T's position, then there's no foundation for  
12 asking Mr. McPhee any questions about what was going  
13 on here. The document speaks for itself.

14 MR. PFAFF: Let me just ask, AT&T if we  
15 consider marking this as an exhibit during lunch and  
16 then we'll come back to it?

17 MR. FRIEDMAN: Sure.

18 BY [!EZ SPEAKER 04]:

19 Q Mr. McPhee, you were involved in the  
20 preparation of the redlines?

21 A No.

22 Q But you testified the redlines were

1 prepared; correct?

2 A Yes, I did.

3 Q And you prepared a matrix showing the  
4 changes that were made?

5 A I did not. The reporting team did. The  
6 same people that did the redlines.

7 Q Did you submit the matrix as part of your  
8 testimony?

9 A It was attached to it, yes.

10 Q Okay. And is it your position that the  
11 changes presented by the porting team to the redline  
12 are necessary in order to port the Kentucky ICA into  
13 Illinois?

14 [!EZ SPEAKER 02]: I want to be very clear what  
15 you mean by "you." Are you asking whether it's  
16 AT&T's position that those changes are necessary for  
17 purposes of the port, or are you asking whether Scott  
18 McPhee is here to support the proposition that each  
19 of them is, including those about which others have  
20 testified, for example, or those about which no one  
21 has testified?

22 MR. PFAFF: I would say the answer is both.

1 BY [!EZ SPEAKER 04]:

2 Q I mean, is it AT&T's position that these  
3 changes are necessary to port the Kentucky ICA into  
4 Illinois?

5 A Yes.

6 Q Okay. And are you the witness for AT&T  
7 that is supporting that position?

8 A I presented the matrix. I don't have an  
9 opinion or a basis for an opinion on portions of that  
10 matrix.

11 Q Okay. So are you saying that if it's not  
12 in your matrix, that you don't have any opinion?

13 A I'm saying if it's something I didn't  
14 testify to, then it's a subject I'm not here to  
15 advocate.

16 Q All right. Did you testify to Attachment  
17 3?

18 A Certain portions of it, yes.

19 Q And specifically in Attachment 3, did you  
20 testify as to the deletion of Section 6.1?

21 A Yes.

22 Q And you include that on your matrix, didn't



1     you?

2           A     It should be on there, yes.

3           Q     Now, I'm going to bring to you -- do you

4     have your copy of the redline, the AT&T redline?

5           A     No.

6           Q     Okay. I'm going to bring to you Sprint's

7     copy of the redline --

8           MR. FRIEDMAN: The AT&T redline?

9           MR. PFAFF: Of the AT&T redline. Thank you,

10    Mr. Friedman.

11    BY [!EZ SPEAKER 04]:

12           Q     -- reflecting the changes that AT&T has

13    proposed. Okay. Do you see that?

14           A     Yes.

15           Q     Now, you have indicated that -- well,

16    strike that.

17                    You would eliminate Section 6.1,

18    specifically, the bill and keep provision; is that

19    right?

20           A     Yes, I would.

21           Q     Okay. And you would replace it with a

22    number of sections within the AT&T proposed redline;

1 is that correct?

2 A That's correct. The sections would all  
3 address the treatment of traffic subject to  
4 reciprocal compensation.

5 Q Okay. And, specifically, the first section  
6 I want to deal with is what's titled, Sprint's CLEC  
7 Interconnection Compensation. Do you see that?

8 A Yes.

9 Q And does AT&T propose that change as a  
10 replacement to 6.1?

11 A I believe in general AT&T proposes  
12 Section 6 to address reciprocal compensation or inter  
13 carrier compensation to replace the brief bill and  
14 keep provision in the old BellSouth agreement.

15 Q And would you agree that Section 6 has  
16 become very large now; is that correct?

17 A It has several paragraphs to it.

18 Q Several, I'm counting from Page 27 to 43.  
19 But, I guess, depending upon your definition of  
20 several... Anyway, you would agree that these are  
21 the provisions in Section 6 that AT&T proposes to  
22 replace Section 6.1; is that correct?

1           A     Yes.

2           Q     Okay.  Now, are you prepared to testify as  
3     to the meaning of the provisions that AT&T is  
4     proposing?

5           A     I guess we'd have to look and see  
6     specifically which meanings.  I could certainly take  
7     a stab at that.

8           Q     If you're not going to testify as to the  
9     proposed meanings in Section 6, was that the role of  
10    another AT&T witness?

11          A     It could have been.

12          Q     Well, specifically, the bill and keep  
13    provisions, was there any other witness who was  
14    testifying with respect to the bill and keep  
15    provision?

16          A     I don't think so.

17          Q     Okay.  So you are the AT&T witness in that  
18    regard; is that correct?

19          A     Yes.

20          Q     Now, you indicated earlier, that the -- in  
21    AT&T's view the appropriate reciprocal compensation  
22    rate is triple 07; is that correct?

1           A     Yes.

2           Q     And the language here dealing with Sprint  
3     CLEC interconnection compensation appears to support  
4     that position.  Would you agree with that?

5           A     Yes.

6           Q     Okay.  Now, you've also inserted  
7     Section 6.18.  And I'm sorry that's on Page 36 of 51,  
8     I think.

9           A     Yes.

10          Q     Do you see that?  And it's titled, CMRS  
11     Local Traffic Compensation?

12          A     Yes.

13          [!EZ SPEAKER 04]:  I have a copy for the judge.  
14     I'm sorry.

15          THE WITNESS:  I have Attachment 3 if that's all  
16     we're going to talk about.  I just didn't have the  
17     entire --

18          [!EZ SPEAKER 04]:  Yeah, that's all we're going  
19     to talk about.

20                     Here, we'll let the judge look at  
21     this.  And I apologize, Judge.

22          JUDGE DOLAN:  That's all right.

1           MR. PFAFF: And I think we can give the  
2   Staff -- I've got one more copy.

3                    Again, my apologies for not handing  
4   more of those out.

5   BY [!EZ SPEAKER 04]:

6           Q     6.18 is entitled, CMRS Local Traffic  
7   Compensation; correct?

8           A     Yes, it is.

9           Q     Now, AT&T has also proposed the inclusion  
10   of the document that entitles the cellular PCS  
11   pricing. And you kind of have to thumb through --  
12   actually, let me just hand -- I've got a copy of that  
13   I can hand out.

14           JUDGE DOLAN: Jeff, not to cut your -- but how  
15   much longer do you have to go?

16           [!EZ SPEAKER 04]: I do have a little bit more  
17   to go.

18                               (Whereupon, a recess was taken.)

19                               (Whereupon, Sprint Cross-Exhibit  
20   No. 3 was marked for  
21   identification.)

22           [!EZ SPEAKER 04]: During our break there was

1 discussion between Sprint and AT&T with respect to --  
2 and I don't think it was marked yet, but it was the  
3 AT&T comments in the Wisconsin proceeding. And I  
4 believe this will be our Exhibit 3 -- Cross 3 and --

5 MR. HARVEY: And just, Counsel, for my own  
6 benefit because I'm behind the rest of the world, the  
7 Cross 3 would be the --

8 [!EZ SPEAKER 04]: It was fully AT&T comments  
9 and excerpted page.

10 MR. RASHES: If I could interject, before the  
11 Public Service Wisconsin Commission on meetings to  
12 the treatment of transiting traffic matter, 05, dash,  
13 2I-0167. It's excerpts from AT&T which are initial  
14 briefs on legal issues related to --

15 [!EZ SPEAKER 04]: Sprint would move for the  
16 admission of that exhibit.

17 MR. FRIEDMAN: No objection.

18 MR. HARVEY: None from Staff.

19 JUDGE DOLAN: Sprint Exhibit No. 3 will be  
20 admitted into the record.

21

22

1 (Whereupon, Sprint Cross-Exhibit  
2 No. 3 was admitted into  
3 evidence.)  
4 BY [!EZ SPEAKER 04]:  
5 Q Mr. McPhee, I think right before lunch I  
6 had handed you a piece of paper that's labeled  
7 "attachments" that say PCS; is that correct?  
8 A Yes.  
9 Q And is it your understanding that this is  
10 an attachment that AT&T would propose to be included  
11 in the AT&T's version of the redline?  
12 A It's my understanding that there would be a  
13 pricing attachment similar to this, and if you  
14 represented it as what AT&T has proposed, then I  
15 believe it to be so.  
16 Q Okay. And you will note -- again, turning  
17 back to the AT&T proposed language in the redline.  
18 A Okay.  
19 Q If you'll look to 6.18 -- I'm sorry.  
20 Attachment 3.  
21 A Okay.  
22 Q Okay. You'll note that in 6.18.2 -- do you

1     see that paragraph?

2             A     Yes.

3             Q     Okay.  And it's the -- the subsection is

4     titled, Compensation for Section 251(b)(5) Calls

5     Transport Termination; is that correct?

6             A     Yes.

7             Q     Now, you'll notice that the last sentence

8     of that section says, The rates for this reciprocal

9     compensation are set forth in the state-specific

10    pricing schedule, paren, wireless, end paren.  Do you

11    see that?

12            A     Yes, I do.

13            Q     Now, is this -- is the attachment that I

14    handed you that's labeled "pricing," is that the

15    attachment that's being referred to?

16            A     Like I said, it very well may be if it was

17    what was included with the redlines, then, yes, it

18    would be.

19            Q     Okay.  Something similar to that.

20                    You had said earlier that AT&T --

21    AT&T's proposed reciprocal compensation rate was

22    going to triple 07; is that correct?



1           A     Yes, I did.

2           Q     Is it your testimony that that would be  
3     AT&T's proposed reciprocal compensation rate for both  
4     Sprint CLEC and Sprint's wireless divisions?

5           A     Yes, it would. And if this pricing  
6     attachment were what was attached to the redline, it  
7     contains errors in their wireless rates.

8           Q     Okay. And, so, specifically, it indicates  
9     in this attachment pricing. It reflects rates for  
10    transport and termination; is that correct?

11          A     Yes.

12          Q     Okay. And it shows for Type 28.005318?

13          A     Yes.

14          Q     Okay. And what you're saying now is, in  
15    fact, this provision would actually just read triple  
16    07?

17          A     That's correct.

18          Q     Okay. Well, I appreciate that.

19                    So the -- well, let me point out  
20    something else to you, in Section 6.18.A.1, CMRS  
21    classification of traffic --

22          A     Yes.

1           Q     Okay.  And it says, Telecom traffic  
2     exchange between AT&T and Sprint PCS pursuant to this  
3     agreement will be classified as either Section  
4     251(b)(5) calls, comma, IXC traffic, comma, or  
5     interMTA traffic.  Do you see that?

6           A     Yes.

7           Q     Okay.  Now, do you see where Section  
8     251(b)(5) calls is capitalized?  Do you see where  
9     "calls" is capitalized?

10          A     Yes.

11          Q     You understand that normally when a term is  
12     capitalized that in a contract it means it's a  
13     defined term?

14          A     Yes, I do.

15          Q     Okay.  Do you know if that phrase is  
16     defined anywhere?

17          A     I would have to look through it to see if  
18     it's a defined term or perhaps a typo.

19          Q     Okay.  Well, and I won't -- I'm sorry.  I  
20     won't ask you to go through the entire contract.

21                     Can you explain how in this  
22     Section 6.18 how AT&T would propose to be compensate

1 or compensate Sprint for the different types of  
2 traffic? Okay. So let me take these one at a time.  
3 Section 251(b)(5) traffic, even if  
4 it's wireless because we're in the CMRS section;  
5 correct?  
6 A Yes.  
7 Q You would propose to exchange that at the  
8 rate of triple 07?  
9 A That's correct.  
10 Q Okay. Now, the IXC traffic, which again, I  
11 see that's referenced, but I don't see it defined  
12 anywhere, what would be AT&T's proposal for IXC  
13 traffic?  
14 A Well, first of all, Section 6.18(a) is just  
15 a classification of traffic. It's not the  
16 compensation for the traffic. So I think we'd have  
17 to look somewhere else in the contract to see what  
18 the compensation is for these type of traffic.  
19 Q So it's not included in that section. Is  
20 that your testimony?  
21 A Not in that specific 16.1, that's correct.  
22 Q Okay. And is interMTA traffic compensated

1     for under this section?

2             A     I don't believe that compensation for  
3     interMTA traffic is addressed here.

4             Q     Okay. Thank you.

5                     All right. In your testimony you  
6     state that the facility sharing provisions in the  
7     Kentucky ICA are state-specific provisions. You can  
8     put aside that attachment just for a minute.

9             A     Okay.

10            Q     And I'm going to move to the facilities  
11     sharing part.

12            A     Okay.

13            Q     You state that the facilities sharing  
14     provisions in the Kentucky ICA are state-specific  
15     provisions; is that correct?

16            A     The factor itself is definitely  
17     state-specific.

18            Q     And, specifically, we're discussing the  
19     provisions in the Kentucky ICA that states that the  
20     wire -- excuse me -- the wireless local  
21     interconnection facilities will be shared on an equal  
22     basis; is that right?

1           A     That's in dispute.  It's -- AT&T says that  
2     that's on a proportional basis.  But that's the  
3     section of the contract.  Correct.

4           Q     Correct.  Thank you.

5                     Now, turning to Section 2.3.2 in  
6     Attachment 3.

7           A     Okay.

8           Q     Do you -- I mean, are you there?

9           A     Yes, I am.

10          Q     And, again, this is the provision that  
11     discusses the equal sharing of the wireless facility;  
12     correct?

13          A     It discusses the sharing of the -- it  
14     discusses the shared facility factor.

15          Q     Do you see -- and the -- midway through the  
16     paragraph there's a sentence that starts -- it says,  
17     In the event a party interconnects?

18          A     Yes, I see that.

19          Q     Could you read that whole sentence, please.

20          A     In what form?  In the Kentucky form or in  
21     the proposed AT&T form?

22          Q     Even in the proposed AT&T form.

1           A     Okay. In the event a party interconnects  
2     via the purchase of facility and/or services from the  
3     other party, the appropriate access tariff as amended  
4     from time to time will apply.

5           Q     And the only change to that sentence that  
6     AT&T has proposed is they have stricken intrastate --  
7     the word "intrastate" and replaced it with "access";  
8     is that correct?

9           A     That's correct.

10          Q     Do you understand that the intent of this  
11     provision is that the facilities would be priced  
12     based on the appropriate tariff?

13          A     I take it to mean that the rate that would  
14     be applied for this specific facility would be an  
15     access tariff.

16          Q     And even in Sprint's version, okay, where  
17     it says, The appropriate intrastate tariff, that  
18     would be the state-specific price out of the  
19     intrastate tariff; is that correct?

20          A     It's the state-specific rate for those  
21     facilities in the tariff.

22          Q     And each state would have a different

1       tariff.    Would you agree with that?

2               A     I believe that's the case, yes.

3               Q     So, for example, for facilities in Alabama,  
4       that state's intrastate tariff would apply; correct?

5               A     Well, the -- I'm sorry.   What state did you  
6       say?

7               Q     I said for Alabama.

8               A     Alabama.   Alabama's tariff would apply.   I  
9       don't know that it's an intrastate tariff or what the  
10      tariff's name is.   But there is most likely a tariff  
11      that applies for the rates for facilities in Alabama.

12              Q     You would agree that under this provision,  
13      that it's likely that Sprint is paying different  
14      prices -- or let me -- strike that.   I'm sorry.

15                       That the price for the underlying  
16      facility is different from state to state.   Would you  
17      agree with that?

18              A     I have no reason to doubt it; but I don't  
19      know that.

20              Q     Would you also agree that the facilities  
21      sharing provisions in Kentucky were entered into  
22      voluntarily?

1           A     In Kentucky I believe they were.

2           Q     Now, in your direct testimony on Page 36 --

3     are you there?

4           A     Yes, I am.

5           Q     -- you state -- on Line 854 there's a

6     question that says, Why is transit traffic not

7     included in AT&T's portion of the shared facility

8     factor? Do you see that question?

9           A     Yes, I do.

10          Q     Okay. And this line of questioning is

11     based upon your calculation of what the appropriate

12     sharing of the facilities should be; right?

13          A     That's correct.

14          Q     Now, you have -- AT&T and you have excluded

15     transit traffic in the calculation of that

16     percentage; is that correct?

17          A     I believe that transit traffic was included

18     in the calculation of that facility factor.

19          Q     Okay. I'm sorry. You're right.

20                     Transit traffic was allocated to

21     Sprint; is that correct?

22          A     That's correct.



1           Q     Okay.  So all the transit traffic, either  
2     to Sprint or from Sprint, was assigned to Sprint when  
3     you made your calculations?

4           A     That's correct.

5           Q     Okay.  And just so we understand, you  
6     understand transit -- when we talk about transit  
7     traffic, it's when AT&T, the ILEC, serves as the  
8     intermediary between two other carriers; is that  
9     correct?

10          A     In this case, that's correct.

11          Q     Okay.  And in your testimony on Page --  
12     it's in your rebuttal testimony.  You've included --  
13     you indicate that the transit rate includes three  
14     separate elements.  And I'm sorry, that's on Page 23  
15     of your rebuttal testimony.

16          A     I see that.

17          Q     Okay.  And those three elements are tandem  
18     switching, tandem transport and tandem transport  
19     facility; is that correct?

20          A     Yes.

21          Q     Could you describe what you mean by those  
22     three elements.

1           A     I believe -- I'm not a cost expert, nor did  
2     I promulgate the rates assigned to these elements,  
3     but it's my general understanding that the element  
4     for tandem switching includes the rate for the  
5     functions of opening up the tandem switch port and  
6     keeping that switch port open.

7                     Tandem transport, I believe, is  
8     circuit -- the rate associated with the costs for  
9     keeping the circuit open from that tandem switch to,  
10    I guess, the terminating CLEC switch or in -- point  
11    of interconnection.

12                    And tandem transport facility is, I  
13    believe, a mileage-based rate for that same open  
14    circuit transport. One of them is a per minute of  
15    use rate and one of them is a mileage rate to measure  
16    the distance.

17           Q     And this is the rate that is assessed to  
18    Sprint for the transit services it obtains from AT&T;  
19    is that correct?

20           A     Yes, it is.

21           Q     And just so I understand the transport  
22    element, is the transport element before or after the

1 tandem switch?

2 A I believe it's -- again, I didn't -- I'm  
3 not the one that made up the rate. I believe it's  
4 the transport once the call is initiated and sent to  
5 AT&T's tandem is the transport beyond the tandem  
6 switch.

7 Q And let me describe then the situation, a  
8 Sprint PCS customer calls a T-Mobile wireless  
9 customer, and we're both interconnected through  
10 AT&T's tandem. Do you understand that? So Sprint  
11 delivers a call across this facility to the AT&T  
12 tandem and AT&T delivers it on -- forwards it on to  
13 T-Mobile; is that correct?

14 A Correct.

15 Q Okay. And what I heard you just say is  
16 that the transport element is that piece after the  
17 tandem -- after AT&T gets the call as tandem and is  
18 forwarding it on to T-Mobile; is that right?

19 A That's my understanding.

20 I'm not -- unfortunately, I'm not  
21 positive. I wasn't -- when these elements were  
22 promulgated, I -- I'm unaware of how the cost people

1 assigned, but that's my general understanding.

2 Q Subject to your caveat, I'll understand it.

3 The charges from -- that AT&T assess

4 to Sprint for transit, is this .005034 per minute of

5 use. Does AT&T assess any other charge for this

6 transit service?

7 A In Illinois or --

8 Q In Illinois. I'm sorry.

9 A I don't know. I'd have to look. I know

10 that this is a tariffed rate, but there might be

11 other old contracts that might have a different rate.

12 I just don't know.

13 Q And this is the -- you referenced the

14 tariff filed in Illinois, Tariff 20; correct?

15 A Yes.

16 Q Okay. And this is the rate that's included

17 in that tariff?

18 A Yes.

19 Q Is this the rate that AT&T charges to other

20 carriers within Illinois for AT&T's transit service?

21 A I would believe so. Like I said, there

22 might be contracts with different numbers in them.

1 But this is a tariff transit rate.

2 Q And other carriers would pay this combined  
3 rate that would include these three elements;  
4 correct?

5 A Other wireless carriers would pay this  
6 combined rate. That's correct.

7 Q Now, in a situation where AT&T -- I mean,  
8 where Sprint is sending the call to T-Mobile -- I'm  
9 sorry. Let me describe another circumstance.

10 Let me describe a circumstance where  
11 now T-Mobile is sending a call to Sprint PCS --

12 A Okay.

13 Q -- using AT&T's transit service through the  
14 tandem switch. Do you understand that?

15 A Yes.

16 Q Now, you've indicated that T-Mobile would  
17 pay the same price with the three elements; correct?

18 A Assuming that they're buying out of the  
19 tariff, that's correct.

20 Q Okay. Now, T-Mobile would then deliver the  
21 call to AT&T. The call would go onto AT&T's tandem  
22 and AT&T would deliver it on to Sprint PCS; correct?

1           A     Yes.

2           Q     And you've stated that in your calculation  
3     that transit traffic is allocated, if you will, to  
4     Sprint for purposes of your sharing calculation; is  
5     that right?

6           A     Sure.

7           Q     Now, when T-Mobile -- and the allocation of  
8     the sharing facility is to determine which carrier is  
9     responsible for the use of that facility; is that  
10    right?

11          A     Well, the facilities sharing factor is  
12    allocating which carriers are responsible for the  
13    cost of that facility. And that's reflective of the  
14    use of the facility.

15          Q     Well, specifically, the facilities sharing  
16    provision between -- in the BellSouth agreement deals  
17    with -- and I'm sorry, in the Kentucky ICA -- deals  
18    with how Sprint and AT&T will share the cost of that  
19    facility; is that correct?

20          A     Yes.

21          Q     Okay. And AT&T has proposed that the  
22    appropriate sharing rate is a proportionate use; is

1       that correct?

2           A       Yes.

3           Q       And you've developed your study about which

4       carrier's proportionally using the facility; correct?

5           A       That's correct.

6           Q       And you've allocated to Sprint the incoming

7       transit traffic?

8           A       Yes.

9           Q       And you would say that that is -- that

10       constitutes Sprint's use of the facility; is that

11       right?

12          A       Essentially, yes.

13          Q       Okay. But in the situation where T-Mobile

14       is calling a Sprint PCS customer, and they're using

15       the transit service, you've also indicated that

16       T-Mobile has agreed to, as part of the rate that it

17       pays for this transport piece, after the tandem; is

18       that right?

19          A       Right. They pay for the usage of the

20       circuitry to transport that call across the facility,

21       which has a separate underlying cost that we're still

22       apportioning between Sprint and AT&T.

1           Q     So AT&T has charged T-Mobile for this cost;  
2     correct?

3           A     They're separate costs.

4           Q     Well, isn't it the same facility?

5           A     I'm not charging for -- I'm not charging  
6     T-Mobile for the facility. I'm charging T-Mobile for  
7     the usage of the switching and the transport that are  
8     part of the trunking and the circuitry that rides  
9     across that facility.

10          Q     But isn't -- didn't you testify that the  
11     transport was the piece after the tandem switch --  
12     the mileage, the transport element?

13          A     The usage of a network beyond the tandem  
14     switch. That's different than the underlying cost of  
15     the facility between the two parties.

16          Q     Now, you understand that AT&T -- I'm sorry.  
17     You understand that Sprint disagrees that its  
18     proportionate use of the facility -- I'm sorry.  
19     Strike that.

20                     In your attachment for pricing -- do  
21     you still have that in front of you?

22          A     Yes, I do.



1           Q     -- you've indicated that the shared  
2     facility factor is .20; is that correct?

3           A     That's what this document reflects, yes.

4           Q     Okay. And that kind of shares AT&T's view  
5     that Sprint uses a facility approximately four times  
6     as much as AT&T?

7           A     Let me make a clarification here.

8           Q     Sure.

9           A     I'm probably the master of corrections  
10    today. This number would reflect that, yes. And I  
11    believe that this pricing attachment, if this is what  
12    was attached to the redline, was done prior to AT&T  
13    completing its analysis of the actual proportions of  
14    traffic. So this number is a standard number that  
15    AT&T would use in the absence of a traffic study.

16                     However, as Exhibit JSM4 shows, that's  
17    not the actual proportion of traffic between the two  
18    parties. I would anticipate that that number would  
19    change to reflect the actual traffic proportions  
20    between the parties.

21           Q     So the .20 was really more in the nature of  
22    a proposal; is that correct?

1           A     I think in the absence of the traffic study  
2     being completed at the time the redlines was  
3     exchanged that is what was proposed.

4           Q     Okay. But the traffic study, at least  
5     AT&T's traffic study would allocate the incoming  
6     transit traffic to Sprint to Sprint; is that correct?

7           A     Yes.

8           Q     Okay. And even your later-developed  
9     traffic study percentages would reflect that  
10    position; correct?

11          A     That's correct.

12          Q     Okay. And do you -- would you expect  
13    Sprint to agree with those shared facility factors?

14          A     They haven't disputed them.

15          Q     And in the BellSouth territory, these types  
16    of factors are not used; is that correct?

17          A     I don't know. I don't know if BellSouth  
18    has used these factors in prior contracts or not.

19          Q     Well, going back to the BellSouth language,  
20    that has been modified, okay, by AT&T, correct --  
21    specifically, looking at 2.3.2, it says that we will  
22    share the costs of the facility equally; is that

1 correct?

2 A Yes. Maybe I misunderstood the prior  
3 question. There is a factor in there. It's just an  
4 equal factor.

5 Q Okay. And the parties were exchanging  
6 traffic that way in BellSouth; is that right?

7 A They were apportioning the cost for that  
8 facility in that way. I don't know what the -- you  
9 know, the traffic was initially balanced, and I don't  
10 know if it is today or not.

11 Q Well, you would agree, though, that the  
12 balance of traffic really isn't at issue in the  
13 facility sharing factor, is it?

14 A Not the balance of traffic. The proportion  
15 of traffic is at issue.

16 Q Well, you're not suggesting that Sprint's  
17 entitled to reciprocal compensation for all the  
18 outgoing transit traffic it sends; right?

19 A No.

20 Q Okay. So we're really talking about the --  
21 the traffic balance issue really has to do with what  
22 each party owes each other for reciprocal

1       compensation; correct?

2               A       From a reciprocal compensation perspective,  
3       yes.

4               Q       Right.

5                       And the facility sharing factor has to  
6       do with the use of the facility by each party;  
7       correct?

8               A       That's correct.

9               Q       Okay. And those could be two different  
10       things?

11              A       Yes.

12              MR. PFAFF: I don't have anything further for  
13       this witness. Thank you.

14              JUDGE DOLAN: Thank you.

15                       Mr. Harvey.

16              MR. HARVEY: Just a couple of things.

17                       CROSS-EXAMINATION

18                       BY

19                       MR. HARVEY:

20              Q       Good afternoon, Mr. McPhee. My name is  
21       Matt Harvey. This is my colleague, Jan Von Qualen.  
22       We represent Staff of the Illinois Commerce

1 Commission. As difficult as it may be to believe, I  
2 think there are a couple questions that still need to  
3 be asked here, and I will ask them.

4 They will all relate to your traffic  
5 study, which I believe has been designated JSM4 to  
6 your direct testimony and such of your testimony  
7 associated with that.

8 A Okay.

9 Q Now, as I understand it, it's your  
10 testimony that what you characterize as intraMTA  
11 1-plus dial calls made by AT&T Illinois customers are  
12 specifically excluded from that study?

13 A That's correct, and that's -- the study was  
14 to show the volumes of local traffic subject to  
15 reciprocal compensation that are exchanged between  
16 the parties. And 1-plus dialed intraMTA traffic is  
17 excluded via the contract from that local  
18 compensation.

19 Q Fair enough.

20 But it is, in fact, excluded, I think  
21 is what I was getting at?

22 A Yes. Yes.

1           Q     And to the extent that it was included for  
2     whatever reason -- and I realize that AT&T doesn't  
3     believe it should be -- but were it to be included,  
4     it's your testimony that that would certainly change  
5     the results of the study?

6           A     It probably would.  Yeah, it probably  
7     would.

8           Q     You did say in response to a question from  
9     Mr. Pfaff that it would, indeed, change the results  
10    of the study, and that's still your testimony?

11          A     Yes.

12          Q     Okay.  Now, since all of the traffic in  
13    question is, as I understand it -- well, the calls  
14    are made by AT&T Illinois customers; correct?

15          A     Yes.

16          Q     So all of the traffic would, therefore, be  
17    traffic originated by AT&T Illinois, would it not,  
18    for purposes of reciprocal compensation?

19          A     Yes.

20          Q     So the change in the study that would  
21    result from the inclusion of this traffic would be an  
22    increase in the minutes of use that AT&T originated

1       and that Sprint terminated; correct?

2           A       Most likely, yes.

3           Q       And that as a result AT&T would -- assuming  
4       that the traffic was subject to reciprocal  
5       compensation, owe Sprint PCS reciprocal compensation  
6       for it; correct?

7           A       If it's a 1-plus dialed call? Is that --

8           Q       Assuming for the sake of argument that the  
9       Commission will find or has already found that this  
10      such traffic -- I will withdraw the question and try  
11      it one more time as I see Mr. Friedman growing  
12      restive here.

13                   IntraMTA 1-plus dialed calls made by  
14      AT&T Illinois -- well, let's confine the discussion  
15      to intraMTA 1-plus dialed calls made by AT&T Illinois  
16      customers. And let us further assume that the  
17      Commission has found that those, in the absence of a  
18      contract, those calls are calls for which AT&T owes  
19      Sprint PCS reciprocal compensation. Are you with me  
20      so far?

21           A       I think you said if we have to pay  
22      reciprocal compensation, would we pay reciprocal

1 compensation?

2 Q No, that's not -- I have done this  
3 inartfully, and I'll try yet again.

4 Let's assume instead that the  
5 Commission has elsewhere found that intraMTA calls  
6 that are passed off to an interexchange carrier and  
7 are thereafter terminated by a wireless carrier are  
8 calls that are, as a matter of law, subject to  
9 reciprocal compensation. And I will just represent  
10 to you that the Commission's done that.

11 A Okay.

12 Q Assuming that such calls were included in  
13 your study, the percentages would change, would they  
14 not? The 57/43 percentage, about which we've heard  
15 so much, would change; correct?

16 A Probably, yes.

17 Q And, in fact, the numbers would -- the  
18 number 57 would decrease and the number 43 would  
19 increase, would that be your understanding of how  
20 that would work?

21 A That would be my expectation, yes.

22 Q Okay. And this comes under the heading of



1 things the Commission's going to want to know about  
2 this case, do you have an opinion as to the magnitude  
3 of any such change?

4 A No, I don't. I have not looked at 1-plus  
5 calls whatsoever to know what quantity does or does  
6 not exist.

7 Q And so you could not, sitting here today,  
8 offer even the most general estimate as to how  
9 that might work -- what the changes might be?

10 A I'm sorry, no.

11 Q Fair enough. Thank you for your patience.

12 [!EZ SPEAKER 05]: And that's all I have for  
13 the witness.

14 JUDGE DOLAN: All right. Thank you.

15 Redirect.

16 REDIRECT EXAMINATION

17 BY

18 MR. FRIEDMAN:

19 Q Could there, Mr. McPhee, be such a thing as  
20 a call that originates with a Sprint PCS customer  
21 within an MTA and that gets handed off to an IXC and  
22 then is terminated to an AT&T enduser. Could there

1     be such a thing?

2           A     I'm not sure that there could be. I would  
3     think that a Sprint PCS customer -- I don't know how  
4     Sprint's network is provisioned, if they have their  
5     own -- if PCS has their own long-distance transport  
6     to get it to the local Chicago exchange, for example.

7           Q     Well, do you know whether -- for example,  
8     let's assume I'm a Sprint PCS customer with a -- I  
9     guess we use the Springfield phone number, and I'm  
10    calling someone in Chicago with a 312 exchange. Can  
11    I on my cell phone punch in 1-3-1-2 and then a phone  
12    number?

13          A     I believe so.

14          Q     Do you know what happens if I do that?

15          MR. PFAFF: I'm going to object. Lack of  
16    foundation. I think -- his witness just said he  
17    didn't know how that call is handled.

18          [!EZ SPEAKER 02]: I just asked him "do you  
19    know." And by definition a question starts "do you  
20    know" can't have lack of foundation.

21          MR. PFAFF: Well, I understand. But I think  
22    he's already said that he doesn't know. But...

1 JUDGE DOLAN: He changed his question a little  
2 bit.  
3 BY [!EZ SPEAKER 02]:  
4 Q Do you know what would -- if you don't  
5 know, just tell me you don't know.  
6 A I would think it would complete. My  
7 experience is -- if I recall correctly, the call  
8 would still complete.  
9 Q Do you know what carrier or carriers would  
10 transport the call?  
11 A I would assume it would be the cellular  
12 carrier and if they have a contract specific to an  
13 IXC that they affiliate to -- they carry traffic  
14 with. There's not a separate wireless PIC for an IXC  
15 that I'm aware of.  
16 Q You have referred several times, I think,  
17 both in response to questions by Mr. Pfaff and  
18 Mr. Harvey to the contract providing that intraMTA  
19 IXC calls are not subject to reciprocal compensation.  
20 Did I understand that correctly?  
21 A Yes. Yes.  
22 Q Where is that -- what contract are you

1 talking about?

2 A It's the BellSouth Kentucky contract. The  
3 provision is actually duplicated in the contract.  
4 It's in Attachment 3 on Page 4 under "wireless local  
5 traffic."

6 Q Okay. Give me just a minute because I'm  
7 going to hand these around, even though probably  
8 everybody has the fatter version of Attachment 3.

9 I've handed out excerpts. So now that  
10 everyone has this, point us to where in Attachment 3  
11 this language that you keep referring to is.

12 A It's Page 4, the paragraph that's titled,  
13 Wireless local traffic.

14 Q Can you read the language in that  
15 definition that you have in mind.

16 A Wireless local traffic: Wireless local  
17 traffic is defined for purposes of reciprocal  
18 compensation under this agreement as, one, any  
19 telephone call that originates on the network of  
20 Sprint PCS within a major trading area and terminates  
21 on the network of AT&T in the same MTA and within the  
22 local access and transport area in which the call is

1 handed off from Sprint PCS to AT&T.

2 And, two, any telephone call that

3 originates on the network of AT&T that is handed off

4 directly to Sprint PCS in the same LATA -- L-A-T-A --

5 in which the call originates and terminates on a

6 network of Sprint PCS in the MTA in which the call is

7 handed off from AT&T to Sprint PCS.

8 Q Let's break that long sentence down a

9 little bit. There is a kind of Part 1 and a Part 2;

10 right?

11 A Yes.

12 Q And both of them -- those are two parts of

13 a definition of wireless local traffic for purposes

14 of reciprocal compensation?

15 A Yes.

16 Q Of those two parts, 1 and 2, is one of them

17 talking about traffic going in one direction and the

18 other talking about traffic going the other way?

19 A Yes, it is.

20 Q Okay. Part 1, is talking about traffic

21 going -- that originates on whose network and

22 terminates on whose?

1           A     It originates on Sprint's network and  
2     terminates to AT&T's network.

3           Q     Okay.  So since it originates on the Sprint  
4     wireless network and terminates on AT&T's, this is  
5     not the kind of intraMTA call we've been talking  
6     about because we've been focusing on traffic going  
7     the other way; right?

8           A     That's correct.

9           Q     Now, for these calls, according to this  
10    contract, that are calls that originate on the Sprint  
11    wireless network and terminate with AT&T, in order to  
12    be subject to recip comp does it say anything about  
13    whether the handoff to AT&T has to be direct?

14          A     It says which the call is handed off from  
15    Sprint PCS to AT&T.

16          Q     Okay.  Now, in Item 2 this is talking about  
17    traffic that originates where and terminates where?

18          A     It originates on AT&T's network and  
19    terminates to Sprint PCS's network.

20          Q     And what does it say in there that leads  
21    you to conclude that in order to qualify for  
22    reciprocal compensation, this call that originates on

1 the AT&T network and is handed off to Sprint PCS,  
2 cannot have an IXC as an intermediary? What leads  
3 you to conclude that?

4 A It states, Any telephone call that  
5 originates on the network of AT&T that is handed  
6 off -- and the word "directly" is used -- directly to  
7 Sprint in the same LATA.

8 Q And, now, on this page that we're looking  
9 at -- strike that.

10 This is language in the Kentucky  
11 agreement; right?

12 A Yes.

13 Q Will this language appear in the Illinois  
14 agreement that emerges from this proceeding as  
15 matters now stand, to your knowledge?

16 A Yes.

17 Q Why will it be included?

18 A It has been reviewed and redlined. The  
19 name BellSouth has changed to AT&T, and has not been  
20 subsequently struck or deleted by any party.

21 Q Well, what we're look at, though, is just  
22 AT&T's redline; right?

1           A     Correct.

2           Q     So AT&T has not proposed the elimination of  
3     this language --

4           A     True.

5           Q     -- that's all we can tell from looking at  
6     this document; right?

7           A     True.   Yes.

8           Q     Do you know whether Sprint has proposed in  
9     its redline the deletion of this provision?

10          A     I don't believe they have.   My experience  
11     is that Sprint only deleted and changed names and  
12     websites, things like that.   This would have been a  
13     notable deletion.

14          Q     Now, in your -- when you were being  
15     questioned by Mr. Pfaff on the subject of intraMTA  
16     IXC traffic, I believe that you said that to your  
17     understanding, one of these calls of the sort that  
18     you all were talking about originating -- I'm just  
19     going to use the same sort of hand he did, okay,  
20     intraMTA IXC call, and we'll all understand, as you  
21     did with him, that that means it originates on the  
22     AT&T network and terminates to Sprint.



1                   I think you said that, to your  
2     understanding, such a call would be subject to  
3     reciprocal compensation under Section 251(5), but  
4     that the payment obligation would not be AT&T's. Did  
5     I hear you say that?

6           A     Yes.

7           Q     Was that correct?

8           A     No, it was not correct.

9           Q     What is correct in your understanding?

10          A     I believe my understanding what's correct  
11     is once the call is handed off to an IXC it is then  
12     subject to switched access charges under, I believe,  
13     Section 251(g) of the Act.

14          Q     Let's talk a little bit about access  
15     charges and reciprocal compensation. Let's imagine  
16     the simplest possible reciprocal compensation call,  
17     okay, a call that originates within a local exchange  
18     area on the network of Carrier X and is handed off to  
19     Carrier Y for termination to its customer, a classic  
20     simple local 251(b)(5) call. Okay.

21                   So a customer of Carrier X initiates  
22     this call. When the customer initiates the call

1     that -- if it's a human being, is acting as a  
2     customer of what company?

3             A     Of Carrier X.

4             Q     And does Carrier X get compensated in some  
5     way normally for the call?

6             A     Yes, the customer pays retail subscription  
7     fees to Carrier X.

8             Q     Like, a regular local phone bill of some  
9     sort?

10            A     Right, for that service.

11            Q     And do you know, kind of, what the theory  
12     is or what the policy is that underlies the  
13     obligation of Carrier X to pay Y reciprocal  
14     compensation, historically, why such payments are  
15     made?

16            A     Generally, it's because it is Carrier X  
17     that's making the call and because -- I'm sorry.  
18     It's the enduser of Carrier X that's making the call.  
19     That enduser is paying subscription fees to Carrier  
20     X. Carrier X is then transporting that call to  
21     Carrier Y, who's incurring costs to complete that  
22     call on behalf of Carrier X. Therefore, Carrier X,

1 as the receiver of the funds from the customer, then  
2 makes Carrier Y whole via reciprocal compensation.

3 Q Okay. I want to ask you essentially the  
4 same series of questions about a classic  
5 long-distance or access call. Okay?

6 A Okay.

7 Q I'm a customer -- a local exchange customer  
8 of AT&T Illinois. I call my mother in Florida, okay,  
9 on a landline call. So I dial 1 and then her three  
10 digit area code and then her seven digits. Okay.  
11 And let's assume that I have chosen Sprint Long  
12 Distance as my long-distance company. Can you  
13 describe in simple terms, not switch to switch, but  
14 just who carries the call from where to where, what  
15 carriers?

16 A AT&T Illinois would carry your call to a  
17 local -- I guess, it you would call it a local access  
18 tandem where it would be connected to the Sprint Long  
19 Distance network. Sprint Long Distance would then  
20 carry that call from Chicago to your mother's  
21 location in Florida where that call would then be  
22 handed off to your mother's local telephone provider

1     for completion.

2           Q     Now, when I pick up my call and dial, in  
3     the traditional, historical way that people who think  
4     about access charges think about it, when I dial 1  
5     and the three digits and the seven, I am acting as  
6     a -- in my capacity as a customer of who when I call  
7     them up?

8           A     A customer of Sprint Long Distance.

9           Q     And what is -- not as a customer of AT&T  
10    Illinois?

11          A     AT&T Illinois provides the access to Sprint  
12    Long Distance, but you are the customer of Sprint  
13    Long Distance for purposes of the completion of that  
14    call to your mother in Florida.

15          Q     Who pays Sprint Long Distance for carrying  
16    that call?

17          A     You do.

18          Q     Do I pay my local phone company, AT&T, for  
19    that call?

20          A     You don't. You pay Sprint Long Distance  
21    for the long-distance charges associated with that  
22    call.

1           Q     And are there some access charges  
2     classically associated with that call?

3           A     Yes. In the intercarrier compensation  
4     regime?

5           Q     Right.

6           A     Sprint Long Distance would owe AT&T  
7     originating access, and it would also owe your  
8     mother's phone company terminating access.

9           Q     And what's the theory behind the obligation  
10    of my local phone company, AT&T Illinois, to have to  
11    pay originating access -- I'm sorry, collect  
12    originating access from Sprint Long Distance? Why  
13    does AT&T Illinois get to charge Sprint Long Distance  
14    for that?

15          A     I believe that's the established access  
16    regime.

17          Q     Okay. Now, let's go back to intraMTA IXC  
18    calls. We have an AT&T Illinois enduser customer who  
19    calls a Sprint PCS customer in the same MTA and dials  
20    1-plus, call gets handed from AT&T to the IXC. When  
21    that call is made, the caller is acting as a customer  
22    of what phone company?

1           A     The IXC.

2           Q     And the IXC collects long-distance -- and  
3     this -- maybe intraLATA, maybe interLATA charges?

4           A     That's correct.

5           Q     Do you know in that situation whether there  
6     are any access -- whether anyone pays anyone any  
7     access fees?

8           A     The IXC would pay the originating enduser,  
9     AT&T, originating access. And there may or may not  
10    be an arrangement in place where the IXC would pay  
11    Sprint PCS terminating access.

12          Q     Now, does the discussion that we just had  
13    have anything at all to do with your view, as  
14    expressed earlier, that intraMTA IXC calls are not  
15    reciprocal compensation calls?

16          A     Yes.

17          Q     What's the connection?

18          A     Once that call becomes a 1-plus call to an  
19    IXC, it's no longer a call subject to reciprocal  
20    compensation; but instead is subject to the access  
21    regime.

22          Q     I think that in response to a question from

1     Mr. Pfaff you acknowledged a general familiarity --  
2     and correct me if I'm wrong -- with some decisions  
3     that have resolved this issue against AT&T?

4             A     That's correct.

5             Q     Do you have any familiarity, general or  
6     specific, with any decisions that resolved it the  
7     other way?

8             A     It's my understanding that there are  
9     decisions that also resolve it the other way or in  
10    AT&T's favor.

11            Q     Okay. And, of course, there's been  
12    discussion of an Illinois decision that has been  
13    described as resolving this issue in opposition to  
14    the position that AT&T is asserting here; right?

15            A     Yes.

16            Q     And that is a decision that you are or not  
17    personally familiar with?

18            A     I'm not familiar with that one.

19            Q     Do you remember Mr. Pfaff asking you if you  
20    were aware that at some point in 2007 the  
21    interconnection agreements between AT&T Illinois and  
22    the various Sprint entities were noticed for

1       termination?

2               A       Yes.

3               Q       I don't remember exactly how you answered  
4       that.

5               A       At first he asked if I knew the status of  
6       the current underlying agreement in Illinois, and I  
7       said I didn't. And then I recalled as he was asking  
8       me, Were you aware of the notice of termination in  
9       the summertime? And I agreed that I was aware of  
10      that. However, I didn't know if the expiration of  
11      that contract had taken place at that point in time  
12      or not.

13              Q       Now, I think in that connection you  
14      indicated that you had some familiarity but not deep  
15      familiarity with matters having to do with the making  
16      and unmaking of interconnection agreements. So if  
17      this pushes you beyond your knowledge, by all means,  
18      say so.

19                      But if it's the case -- when a notice  
20      of termination of an interconnection agreement is  
21      given, do you have any understanding as to for how  
22      long or until when the interconnection agreement in



1 the normal course remains nonetheless in operation?

2 A It's my general understanding that most  
3 contracts have clauses in them where they would  
4 continue to operate until the parties implement a  
5 successor agreement.

6 Q Do you know whether -- do you happen to  
7 know whether that is the case with AT&T's  
8 interconnection agreements with the Sprint entities?

9 A It's my understanding that this contract  
10 will continue to apply until a new one is in place.

11 Q Okay. Do you remember Mr. Pfaff drawing  
12 your attention to language in Merger Commitment 7.1?

13 A Yes.

14 Q That says, I think, Any requesting carrier?

15 A Yes.

16 Q Imagine, if you will, that a group  
17 consisting of three -- well, consisting of, let's  
18 say, the Sprint entities that are complainants here  
19 and -- excuse me just a second. I'm going to start  
20 this question over. Sorry. I'm going to start that  
21 question over again.

22 Imagine that a group of competitive

1 local exchange carriers with names, Datanet, Level 3,  
2 Broadwing, and, let's say, MCI -- if they still have  
3 CLEC operations -- came as a group to AT&T Illinois  
4 and said, We, as a group, want that agreement that  
5 they've got, that Sprint PCS and Sprint CLEC have in  
6 Kentucky.

7 First, if any one of them  
8 individually -- do you have an understanding as to  
9 whether any one of them individually would be able to  
10 do the port subject, of course, to the limitations in  
11 the merger commitment?

12 A I would believe that subject to the  
13 limitations in the merger commitment that any single  
14 carrier could port the contract.

15 Q Or maybe in this case it would have to be a  
16 CLEC with a wireless carrier?

17 A That's why I hesitated. This is kind of a  
18 unique contract.

19 Q Well, what about if Datanet and Level 3 and  
20 Broadwing and MCI got together with a wireless  
21 carrier and said, Hey, the five of us together -- we  
22 don't want separate agreements. We want one

1     agreement with you all.  Do you have any view on  
2     whether the merger commitment contemplates that?

3             A     I believe the merger commitment, it says  
4     any requesting telecommunications carrier, in the  
5     singular, those carriers are separate and distinct  
6     companies.

7             Q     So the fact that any requesting carrier can  
8     do to, doesn't necessarily imply that the group of  
9     them can do it together?

10            A     Not under one contract, that's correct.

11            [!EZ SPEAKER 02]:  That's all I have.

12            JUDGE DOLAN:  Any recross?

13            MR. PFAFF:  Just a couple follow-up.

14                         RECROSS-EXAMINATION

15                         BY

16                         MR. PFAFF:

17            Q     Your attorney led you to a definition in  
18     the BellSouth agreement for wireless local traffic;  
19     correct?

20            A     Yes.

21            Q     And the gist of it is that the call that  
22     we're talking about today, the intraMTA IXC call, is

1 excluded from the definition of wireless local  
2 traffic; correct?

3 A That's correct.

4 Q So is it your understanding that under the  
5 BellSouth agreement, Sprint PCS is not entitled to  
6 charge BellSouth for that call?

7 A In the direction of AT&T originating --

8 Q Right.

9 A The call to an IXC to Sprint?

10 Q Right.

11 A That's correct.

12 Q Well, I apologize. Actually, the question  
13 is: In the BellSouth agreement, the parties don't  
14 pay each other anyway reciprocal compensation for  
15 wireless local traffic; is that right?

16 A For wireless local traffic, that's correct.

17 Q So the exclusion of a category from  
18 wireless local traffic doesn't really mean anything  
19 because we wouldn't have charged for it -- we  
20 wouldn't have billed for it anyway; correct?

21 A You wouldn't have billed AT&T for that  
22 call --

1           Q     Under --

2           A     -- you would have billed the IXC for that

3     call.

4           Q     I'm sorry.

5                     We wouldn't have billed AT&T for that

6     call under the BellSouth agreement because it was a

7     bill and keep arrangement; correct?

8           A     No, you wouldn't have billed AT&T for that

9     call because it was an IXC call.  It's not contained

10    within the bill and keep arrangement.  So the bill

11    and keep arrangement has nothing to do with whether

12    or not you would bill for that call.

13          Q     We wouldn't because the BellSouth

14    agreement, the Kentucky ICA, is a bill and keep

15    arrangement for local traffic; is that correct?

16          A     For local wireless traffic, that's correct.

17          Q     So we're not sending each other bills?

18          A     That's correct.

19          Q     So the exclusion of a certain call doesn't

20    change the bill and keep arrangement, does it?

21          A     Well, it depends if you're excluding a call

22    that's confined within what's eligible for bill and

1 keep or if you're trying to exclude a call that's  
2 beyond the scope of what's contained within bill and  
3 keep. And this call is not contained within the  
4 scope of the bill and keep provisions of this  
5 contract.

6 Q Is Sprint in the BellSouth territory,  
7 charging BellSouth for that call?

8 A I don't know. They shouldn't be.

9 Q Okay.

10 A I don't know that.

11 Q So would you say under the contract we  
12 couldn't do that; right? We wouldn't be entitled to  
13 charge them for that call?

14 A I'm not sure. I'm not sure the contract  
15 contemplates that call because that call is an IXC  
16 call between the IXC and Sprint. So I'm not sure the  
17 contract would say "yes" or "no" whether there's a  
18 bill applicable or not.

19 Q Are you saying that Sprint PCS is entitled  
20 to charge terminating access to the IXC for this  
21 call?

22 A I don't know if they're entitled to that or

1 not. I guess it would depend upon what contract  
2 Sprint PCS or what arrangement Sprint PCS may or may  
3 not have with that IXC.

4 Q All right. And you are a reciprocal  
5 compensation subject matter expert; correct?

6 A Yes.

7 Q Okay. Are you aware the FCC decisions  
8 dealing with wireless carriers' ability to collect  
9 terminating access?

10 A A little bit. Mostly my experiences have  
11 been with local traffic.

12 Q Okay. Are you aware of decisions that have  
13 indicated that in order for a wireless carrier to  
14 obtain terminating access for an IXC, it must enter  
15 into a contract?

16 A That's my understanding.

17 Q So a wireless carrier couldn't just file a  
18 tariff; right?

19 A That's my understanding.

20 Q Oh, I know. The changes that you would  
21 propose that need to be made to the Kentucky ICA to  
22 comport with the fact that your belief the bill and

1 keep is not -- is a state-specific price, okay -- in  
2 other words, you've made changes to the reciprocal  
3 compensation provisions to eliminate the bill and  
4 keep provision; is that correct?

5 A Yes.

6 Q Okay. And you would not -- you've  
7 indicated that you haven't changed the language of  
8 the definition of wireless local traffic; is that  
9 correct?

10 A It's still within the contract. That's  
11 correct.

12 Q So under AT&T's proposal, would Sprint be  
13 entitled to charge AT&T reciprocal compensation for  
14 the intraMTA IXC traffic that is originated by the  
15 AT&T ILEC customer?

16 A That's 1-plus dialed to an --

17 Q Yes. Yes.

18 A Would Sprint be able to charge AT&T for  
19 that?

20 Q Yes.

21 A No.

22 Q So we would not be entitled -- under the



1 proposals, we would not be entitled to reciprocal  
2 compensation for that call from AT&T?

3 A That's correct.

4 MR. PFAFF: That's all I have.

5 MR. HARVEY: I'm going to refrain from further  
6 cross-examination.

7 JUDGE DOLAN: Thank you, sir.

8 I just want to take a quick break  
9 before we go to our next witness.

10 (Whereupon, a recess was taken.)

11 MR. HUTTENHOWER: Your Honor, AT&T Illinois to  
12 sort of do a cleanup on its case would like to offer  
13 into evidence the direct testimony of Lance McNeal,  
14 which is Exhibit 4.0, and the direct testimony of  
15 Curtis Read, which is Exhibit 5.0.

16 These documents were submitted on  
17 e-Docket this morning in one submission that bears  
18 Tracking No. 91416. It is the written testimony we  
19 have previously filed on March 25th with the  
20 following changes: First, the exhibit numbers are  
21 now on the cover page; there is a header that  
22 identifies them by exhibit number; and then each

1 piece of testimony has at the back the affidavit of  
2 the witness attesting that it is his testimony.

3 So, as I said, I'm moving for  
4 admission of these two pieces of testimony into  
5 evidence as 4 and 5.

6 JUDGE DOLAN: Any objections?

7 MR. SCHIFMAN: None from Sprint.

8 MR. HARVEY: None from the Staff, your Honor.

9 JUDGE DOLAN: All right. Then AT&T Exhibit 4.0  
10 and AT&T Exhibit 5.0 will be admitted into the  
11 record.

12 (Whereupon, AT&T Exhibit  
13 Nos. 4.0 and 5.0 were admitted  
14 into evidence.)

15 MR. HUTTENHOWER: And I guess I should say I  
16 have some paper copies if anybody wants them.

17 The other housekeeping matter from  
18 AT&T's perspective is that we wanted to move into  
19 evidence as AT&T Illinois Exhibit 6.0, the AT&T  
20 Illinois redline of the Kentucky agreement. That was  
21 submitted on e-Docket in three parts on March 24th,  
22 2008. And the tracking numbers for those three parts

1     are 90519 is a cover letter, 90509 is Parts 1 through  
2     5, and 90512 is Parts 6 and 7.

3             JUDGE DOLAN:   What was the date that that  
4     was --

5             MR. HUTTENHOWER:   March 24th.

6             JUDGE DOLAN:   Any objections?

7             MR. RASHES:   Yes, your Honor.

8                     This exhibit is not sponsored by a  
9     witness denying us our opportunity to cross-examine  
10    various witnesses who have responsibility for every  
11    one of the changes in that document.  They've had two  
12    opportunities, both on direct and redirect -- not  
13    direct -- yeah, direct and rebuttal testimony to  
14    include it as exhibits with their witnesses.

15                    It was recently raised in Michigan by  
16    AT&T that -- where Sprint did not include the  
17    redline, that you didn't include it, you'd lose the  
18    opportunity to do so.  So they're applying a double  
19    standard.  Clearly, in addition, when we want to file  
20    late testimony or late exhibits, they did not allow  
21    that either.

22                    It's basically letting them get

1 something that they've already -- we just had a  
2 witness say there are numerous inaccuracies in as he  
3 was going through and that were being pointed out to  
4 him. It's letting them get something in that we know  
5 is inaccurate without sponsored by a witness just to  
6 have it into evidence.

7 In addition, your Honor, if it were  
8 being sponsored by a witness, there may be many more  
9 pieces of it that we'd want to cross-examine because  
10 the witness would have to explain every change in  
11 that document, which we've had sections where they've  
12 had -- where we've tried to raise it, but objected to  
13 that that witness didn't address that subject.

14 We feel this is late evidence, that it  
15 should have been presented as evidence in a timely  
16 fashion.

17 [!EZ SPEAKER 02]: And I'll respond. And  
18 Mr. Rashes gave a number of grounds for his  
19 objection. I hope I hit them all. I didn't start  
20 writing quickly enough.

21 I guess I should be clear that first  
22 that in the nature of the exhibit is the fact that

1     this is not offered as evidence.  It is really in the  
2     nature of a demonstrative exhibit, that is to say  
3     that is made part of the record so that the ALJ and  
4     the Commission can know -- can have before them and  
5     can know the contract language that's at issue.

6                     So it is what it is.  If it's  
7     inaccurate, it's inaccurate.  But it's not offered as  
8     being probative of anything.  And it's not offered as  
9     support for AT&T's position.

10                    With respect to sponsorship, this  
11     notion that an exhibit has to be sponsored by a  
12     witness is, to me, suggests a fundamental  
13     misunderstanding of the way adversarial proceedings  
14     work.  For example, Sprint today offered in evidence  
15     and AT&T did not object to the admission of some  
16     documents.  The documents are admitted because, at  
17     least at the threshold, they may have some probative  
18     value.  One does not need a sponsor for such things.

19                    Sprint repeatedly has made the  
20     point -- and I'm turning to Mr. Rashes', I think,  
21     next objection, that somehow -- and this ties with  
22     the sponsorship point -- that it is AT&T's obligation

1     somehow to have a witness here who can justify  
2     everything on the matrix.  Again, fundamental  
3     misunderstanding of the way this works.

4                     We put before the Commission the  
5     changes we've proposed.  We, as a party, choose, as  
6     Sprint does, to offer evidence, okay, in the form of  
7     testimony or otherwise to the extent that we choose  
8     in support of our positions.  To the extent that we  
9     don't do that, okay, then we may pay a price.  Okay.  
10    Sprint is free to argue that with respect to change  
11    such and such, AT&T showed nothing, they offered  
12    nothing.  Okay.  But there is certainly no rule or  
13    principle of anything that suggests that a party has  
14    some kind of freestanding obligation to support  
15    everything that's put in before a Commission.

16                    So we don't need a witness to support  
17    these things.  And, you know -- and I'll note, I'm  
18    carrying on a bit much, and I apologize for that.  
19    But it bothers me when someone says to a witness,  
20    Well, who's the witness who's going to testify about  
21    this?  The answer is, there doesn't have to be one.  
22    Okay.  If we don't offer a witness, then someone may

1 find that we failed to make our case if they decide  
2 we have the burden.

3 With respect to late filed, we did not  
4 object today to the late filing of some exhibits  
5 because under the circumstances, all being  
6 considered, it wasn't we thought particularly  
7 inappropriate. And we were given the opportunity to  
8 look at the documents to make a determination whether  
9 they should be admitted. And in due course, we  
10 consented.

11 There's a difference between that and  
12 testimony which we moved successfully to strike the  
13 other day on the ground that it -- and we hadn't seen  
14 it before -- was filed after the date for testimony.  
15 The redline, as we all know, has before in Sprint's  
16 hand since February 12th. So there's no element of  
17 surprise here.

18 And, in addition, I must say, and I  
19 must be mistaken in this regard, that we all  
20 understood and had agreed, I thought, that that  
21 needed to be made part of the record for the sake of  
22 clarity. So I hope I've covered everything. But if

1 not --

2 MR. RASHES: If I could have an opportunity to  
3 briefly respond so Mr. Friedman's remarks, your  
4 Honor?

5 JUDGE DOLAN: Sure.

6 MR. RASHES: Since this is not being offered as  
7 evidence, then why put it in as an exhibit? All  
8 exhibits are, by definition, evidence.

9 With regard to sponsorship, there's is  
10 big -- there's a substantial significant difference  
11 between cross-exhibits and an exhibit -- and a direct  
12 exhibit. And what they are now proposing is a direct  
13 exhibit sponsored by an unnamed party supporting  
14 AT&T's -- or put in by AT&T, an AT&T supporting  
15 AT&T's position; as opposed to a cross-exhibit and  
16 especially the nature of our cross-exhibit this  
17 morning were all admission to a party opponent.

18 This becomes, you know, just basically  
19 let's throw everything plus the kitchen sink into the  
20 record and see what surfaces at the top, and that's  
21 really not permissible.

22 MR. HARVEY: Could I be heard briefly on this,



1     your Honor?  And I sort of know I'm going to regret  
2     sticking my oar in here.

3                     This matter, while brought before us  
4     on complaint, is beginning to walk, quack, have  
5     webbed feet, like an arbitration.  And to the extent  
6     that that's true and to the extent that the  
7     Commission and you, the judge, are going to be  
8     required to pick winners in terms of contract  
9     language, it's Staff's view that all the contract  
10    language is going to have to be there, whether in  
11    evidence or in some other form.  And that's all I'll  
12    really say on it.

13            JUDGE DOLAN:  Well, I have to -- not that just  
14    because Mr. Harvey has said what he's said, but I  
15    think the Commission is going to want to see a  
16    complete record.  And without both party's redline  
17    versions in the record, it's not going to be a  
18    complete record.

19                     So I'm going to overrule your  
20    objection and I'm going to admit this document into  
21    evidence.

22

1 (Whereupon, AT&T Exhibit No. 6.0  
2 was admitted into evidence.)  
3 [!EZ SPEAKER 03]: For the record,  
4 Mr. Huttenhower, that -- can you just tell me again  
5 AT&T Exhibit 4 is who?  
6 MR. HUTTENHOWER: McNeal.  
7 [!EZ SPEAKER 03]: McNeal.  
8 JUDGE DOLAN: All right. Mr. Harvey, are you  
9 ready to present your next witness?  
10 MR. HARVEY: I'm indeed, your Honor. We'll  
11 ask -- we'll call Jeffery H. Hoagg at this time.  
12 JUDGE DOLAN: Proceed.  
13 (Witness sworn.)  
14 JEFFERY H. HOAGG,  
15 called as a witness herein, having been first duly  
16 sworn, was examined and testified as follows:  
17 DIRECT EXAMINATION  
18 BY  
19 MR. HARVEY:  
20 Q Mr. Hoagg, could you state your name and  
21 spell it for the record, please.  
22 A Jeffery H. Hoagg, H-o-a-g-g.

1           Q     Now, Mr. Hoagg, do you have before you a  
2     document that has been marked Staff Exhibit 1 in this  
3     proceeding that consists of 15 pages of text in  
4     question and answer form with one attachment?

5           A     Yes.

6           Q     Is that your direct testimony in this  
7     proceeding?

8           A     Yes, it is.

9           Q     Was that prepared by you or at your  
10    direction?

11          A     Yes.

12          Q     If I were to ask you the questions set  
13    forth in the document that has been marked for  
14    identification as Staff Exhibit No. 1, would your  
15    answers be the same as they were on the day that  
16    you -- at the time you prepared and caused to be  
17    filed that testimony?

18          A     Yes.

19               [!EZ SPEAKER 05]: I will note for the record  
20    that Mr. Hoagg's direct testimony was filed on  
21    e-Docket on March 25th, 2008, and bears the Tracking  
22    No. 90581.

1 BY [!EZ SPEAKER 05]:

2 Q Turning to another document, do you have in  
3 front of you, Mr. Hoagg, a document that has been  
4 marked for identification as Staff Exhibit 2.0?

5 A Yes.

6 Q Does that consist of seven pages of text in  
7 question and answer form with no attachments?

8 A Yes.

9 Q Is that your rebuttal testimony in this  
10 proceeding?

11 A Correct.

12 Q Was that document prepared by you or at  
13 your direction?

14 A Yes.

15 Q If I were to ask you the questions set  
16 forth in Staff Exhibit No. 2.0, would you give me the  
17 same answers today as you did on the day -- at the  
18 time you prepared it?

19 A Yes.

20 [!EZ SPEAKER 05]: I would note for the record  
21 that Staff Exhibit No. 2.0 was filed on April 4th,  
22 2008, and bears the Tracking No. 91002.

1                   And at this time, I would move for  
2 admission of Staff Exhibits No. 1.0 and attachments  
3 and No. 2.0 and tender the witness for  
4 cross-examination.

5           JUDGE DOLAN: Any objection?

6           MR. SCHIFMAN: None.

7           MR. FRIEDMAN: No objection.

8           JUDGE DOLAN: All right. Then Staff  
9 Exhibit 1.0 and attachments and Staff Exhibit 2.0  
10 will be admitted into the record.

11                               (Whereupon, Staff Exhibit  
12                               Nos. 1.0 & 2.0 were admitted  
13                               into evidence.)

14           JUDGE DOLAN: Proceed.

15                               CROSS-EXAMINATION

16                               BY

17                               MR. SCHIFMAN:

18           Q     Good afternoon, Mr. Hoagg.

19           A     Afternoon.

20           Q     Hi, Ken Schifman on behalf of Sprint.

21                   We've met together in previous proceedings, have we  
22                   not?

1           A     Yes.

2           Q     Okay.  A pleasure to see you again today.

3                     Mr. Hoagg, in your direct testimony on

4     Page 4 there's some discussion regarding how parties

5     could wait months, if not years, for FCC rulings.  Do

6     you see that on Lines 96 through 99?

7           A     Yes.

8           Q     Okay.  And you go on to state in that

9     answer that you're advised by counsel that there is

10    no statutory deadline by which the FCC must act in a

11    declaratory ruling proceeding?

12          A     Correct.

13          Q     Are you aware of a statutory deadline for

14    the disposition of this matter that we're here taking

15    testimony on today?

16          A     In this proceeding?

17          Q     Yes.

18          MR. HARVEY:  I think we'll stipulate that there

19    is one.

20    BY [!EZ SPEAKER 01]:

21          Q     Okay.

22          A     Yeah, I am vaguely aware there is a

1 deadline.

2 Q Okay. Thanks. That's all I wanted to  
3 know.

4 And, Mr. Hoagg, I've presented to you  
5 several pages from the merger commitments of the  
6 BellSouth AT&T merger in FCC Docket 06-189. Do you  
7 have that document?

8 A Yes, I do.

9 Q Okay. On the second page, it's Page 149,  
10 at the bottom, it says, Reducing transaction costs  
11 associated with interconnection agreements. Do you  
12 see that?

13 A Yes.

14 Q And it's -- number one, under that heading  
15 is the topic under which this proceeding is  
16 proceeding under; is that right?

17 A That's a big part of it. I mean --

18 Q Okay.

19 A -- I guess I understand the -- if I'm not  
20 misspeaking, I understand the complaint that you have  
21 brought to have -- there are other prongs to it, but  
22 that this is a central part of this case, obviously.

1           Q     Thanks for that clarification.

2                     And under that Merger Commitment 7.1

3     it talk- -- in the first sentence it talks about any

4     entire effective interconnection agreement shall be

5     made available, does it not?

6           A     Yes.

7           Q     Okay.  And what's your understanding of any

8     entire effective interconnection agreement?

9           A     Well, I guess I would understand those

10    words pretty -- you know, to be pretty plain.  I

11    mean, we all know -- well, I think, we all know what

12    an interconnection agreement is basically.

13                     "Any," would mean -- you know, would

14    mean any one that then comes -- that fits with the

15    language that then follows.

16                     "Entire" means the agreement.

17                     "Shall make available," I mean, I'd

18    have to go back to that language.  The ILEC shall --

19    I assume -- I sort of interpret that meaning shall

20    make available, shall offer, if so desired by a

21    requesting telecom carrier.

22                     "Any entire effective," effective, I



1 mean, you know, we all know that there are some  
2 issues surrounding when an agreement is effective and  
3 when it's not. But, I mean, I understand those just  
4 to be plain English words.

5 Q Okay. Is it your understanding that the  
6 Kentucky ICA that Sprint wishes to port here and that  
7 is attached to Mr. Felton's testimony is an entire  
8 effective interconnection agreement?

9 A That's my understanding.

10 Q And the merger commitment goes on to have  
11 limitations to the porting of an entire effective  
12 interconnection agreement; correct?

13 A Correct. Although, I -- you know, we all  
14 seem to read these slightly differently. In my -- my  
15 own understanding of what these words really mean, I  
16 think the word "condition" is, perhaps -- conditions  
17 is closer to how I understand it. But I'll take your  
18 word. I think what these are really are conditions,  
19 but with that clarification.

20 Q I tend to agree with you. The language  
21 that the AT&T witness stated was "limitations," but  
22 "conditions" is appropriate for us to use here. I'll

1     accept your definition of that.

2                     Is it your understanding, Mr. Hoagg,  
3     that for a provision from an entire effective  
4     interconnection agreement, like the Kentucky ICA to  
5     not be ported, it must fit into one of the conditions  
6     in this Merger Commitment 7.1; is that right?

7             A     Could you repeat that?

8             Q     Sure.

9             [!EZ SPEAKER 01]:   Could you repeat that  
10    question, please.

11                                 (Whereupon, the record was read  
12                                 as requested.)

13             THE WITNESS:   My only hesitation I think  
14     answering yes, I think if I understand the question  
15     correctly, I mean, I think there are some -- there  
16     may be some disagreement as to whether or not there  
17     are any other rules, regulations, et cetera, et  
18     cetera, that one way or another bear on this issue  
19     and are effective when one -- when this particular --  
20     when this merger commitment is sort of activated by a  
21     telecom carrier.

22                                 There is disagreement about whether

1     there is anything else that bears on this.  But  
2     putting that aside, because I don't really -- those  
3     disagreements seem to be primarily legal in nature to  
4     me.  Putting that aside, I think I agree with -- I  
5     think I answered "yes" to that question.

6     BY MR. SCHIFMAN:

7             Q     Is it your understanding, Mr. Hoagg, that  
8     AT&T may not pick and choose different provisions  
9     that it wants to port from --

10            A     Right.

11            Q     -- an entire effective interconnection  
12     agreement?

13            A     I will certainly agree with that.  Neither  
14     party can pick and choose.  It is sort of a -- want  
15     of a better word -- it is sort of an all-or-nothing  
16     rule.  And everything -- you know, the way I view  
17     these conditions, just for a little bit of expansion,  
18     is, you know, the entire agreement is at least  
19     potentially eligible to come into Illinois.

20                     And it's got to pass some through --  
21     this is the way I think of it.  It's got to pass  
22     through these various screens.  Okay.  One of the

1 screens is technical feasibility in Illinois. Okay.  
2 You look at every provision, every word, whatever, in  
3 that thing, and you just make sure, you know, that  
4 everything's technically feasible. Same thing with  
5 you look at every provision in that agreement and say  
6 is that provision or whatever it is you're examining  
7 consistent with the laws and regulatory requirements  
8 of Illinois.

9 Same thing with the state-specific  
10 pricing. That's a screen which every price in that  
11 agreement that's the candidate for importation must  
12 pass through that screen before it can be imported.  
13 That's my understanding of what this -- those  
14 conditions mean.

15 Q Thanks.

16 Mr. Hoagg, to dig just a bit deeper,  
17 not too much deeper into the Interconnection  
18 Commitment -- or Condition 7.1, the first -- let's  
19 see, it looks like it's all one sentence, does it  
20 not?

21 A It's a long sentence.

22 Q It's going to be hard to break up, but it

1 looks like it's all one sentence; right?

2 A Yes, it is.

3 Q Okay. So the -- in the entire effective  
4 interconnection agreement says that that is subject  
5 to state-specific pricing and performance plans and  
6 technical feasibility, does it not?

7 A Correct.

8 Q Okay. And then it goes on to list some  
9 other screening factors, to use your word. Further  
10 that an AT&T BellSouth ILEC shall not be obligated to  
11 provide pursuant to this commitment any  
12 interconnection arrangement or UNE -- U-N-E -- unless  
13 it is feasible to provide given the technical network  
14 and OSS attributes and limitations in, and is  
15 consistent with the laws and regulatory requirements  
16 of the state for which the request is made.

17 Doesn't the factor about technical  
18 network and OSS attributes and limitations and law --  
19 state laws and regulatory requirements, don't those  
20 screening factors apply only to interconnection  
21 arrangements or UNEs based on the structure of that  
22 commitment?

1           MR. HARVEY: I think that somewhat calls for a  
2   legal conclusion, but if it's understood that his  
3   answer to this is based on his own understanding of  
4   it and does not constitute a legal conclusion, I  
5   guess he can answer.

6           MR. SCHIFMAN: I'll accept that.

7           THE WITNESS: No. I must say, that's not way I  
8   understand it. My understanding is a pretty -- you  
9   know, is a nonlawyers understanding, pretty  
10   straightforward understanding. You know, humor me.  
11   It says -- you know, you got to have -- you got to  
12   pass through the pricing screen. It's got to be  
13   state-specific pricing, it has to have state-specific  
14   performance plans and it's got to be technically  
15   feasible. Okay. Those seem pretty clear.

16                   Then the way I understand the next  
17   couple of clauses -- or perhaps it's all one  
18   clause -- is that -- and I think of these as not  
19   technical feasibility. I internally sort of thought  
20   to myself these are general feasibility conditions;  
21   that is, not just technical, but if there are OSS  
22   certain, things about OSS that would make it -- well,

1 let's say not impossible, but virtually impossible to  
2 import something in the Kentucky ICA, that that's not  
3 a technical feasibility issue, per se, but that's a  
4 general feasibility issue. So I take this language  
5 talking about -- oh, I see what you mean.

6 Any interconnection arrangement or UNE  
7 unless it is feasible to provide -- I guess, I never  
8 really focused on that. Right now -- here right now,  
9 I would agree that what I've called sort of the  
10 general feasibility conditions do seem to be focused  
11 on interconnection arrangements.

12 Of course, now, there's a word that we  
13 might -- you know, that might cause some difficulty  
14 in terms of agreement about what it means. But I  
15 think I agree with you that interconnection agreement  
16 or UNE, the general -- what I'm even thinking of as  
17 general feasibility conditions apply to that.

18 Now, as to, And is consistent with the  
19 laws and regulatory retirements of the state, I would  
20 certainly continue to read that with, Listen, that's  
21 an overarching requirement that anything that we're  
22 talking about here; whether it's interconnection

1 arrangements, whether it's -- whatever it is, has to  
2 be consistent with laws and regulatory requirements  
3 of the state. So I don't -- that clause I see as  
4 something separate and apart.

5 BY MR. SCHIFMAN:

6 Q Thanks for that interpretation.

7 Just to clear up -- I think I got your  
8 meaning, but maybe I heard it wrong or maybe you  
9 misspoke. But towards the end of your answer did you  
10 mean to say pursuant to this commitment any  
11 interconnection or arrangement -- I think you said  
12 agreement. So let's me just get --

13 A I should have said -- I meant to say  
14 arrangement.

15 Q Okay. I think we have it straight then.

16 A Right. If I said agreement, I misspoke.

17 Q I also put in front of you, Mr. Hoagg,  
18 Section 13-801 from the Illinois law, at least the  
19 first two subsections of it, A and B. Do you have  
20 that?

21 A Yes, I do.

22 Q Okay. And would you agree with me that



1     under Illinois law, your understanding of it is that  
2     if an ILEC that is affiliated with AT&T Illinois  
3     provides a particular interconnection arrangement or  
4     interconnection agreement in another state, that it  
5     is technically feasible to be done here in Illinois?

6           MR. HARVEY:   I think that does call for a legal  
7     conclusion.

8           MR. SCHIFMAN:   Okay.   I'll delete the reference  
9     to Illinois law.

10    BY MR. SCHIFMAN:

11           Q     Mr. Hoagg, is it your understanding that if  
12     an ILEC affiliated with AT&T Illinois provides a bill  
13     and keep arrangement in Kentucky that it is  
14     technically feasible for it to provide a bill and  
15     keep arrangement here in Illinois?

16           A     Well, putting aside any legal -- you know,  
17     any of the legal overlay, I'd say, you know, that at  
18     minimum there's a strong presumption -- there would  
19     be a strong presumption.   I would have to be shown  
20     otherwise, personally.

21           Q     Okay.   And in this section of Illinois law,  
22     let me ask you --

1           MR. HARVEY:   Forgive me, Counsel.   Could we  
2           specifically designate a section or subsection that  
3           we're talking about here?

4           [!EZ SPEAKER 01]:   Okay.   Well, I guess my  
5           prior question that Mr. Hoagg just answered did not  
6           relate at all to any of the section of 13-081.

7           [!EZ SPEAKER 05]:   And that was my  
8           understanding as well.   So...

9           [!EZ SPEAKER 01]:   If I move on to refer to a  
10          section, I will attempt to do so here.

11          MR. HARVEY:   Fair enough.

12          BY MR. SCHIFMAN:

13          Q       I will refer to 13-801(a).   And the second  
14          paragraph basically talks about ILECs providing  
15          requesting telecom carriers with interconnection  
16          colocation network elements, and it goes on and on.  
17          And it says, To enable the provision of any and all  
18          existing and new telecom services within the LATA.  
19          Do you see that?

20          A       Enable the provision of any and all  
21          existing -- okay.

22          Q       Okay.   And then the following sentence

1     says -- it talks about requiring the ILEC to provide  
2     interconnection colocation and network elements in  
3     any manner technically feasible to the fullest extent  
4     possible to implement the maximum development of  
5     competitive telecom services offerings. Do you see  
6     that?

7             A     Yes, I do.

8             Q     The Kentucky ICA that Sprint is attempting  
9     to port into Illinois is a competitive telephone  
10    offering, is it not?

11            MR. HARVEY: Are you asking him for whether  
12    he -- his opinion --

13            MR. SCHIFMAN: Whether he believes that to be  
14    the truth. Yeah.

15            MR. HARVEY: Let me just get some clarification  
16    here. The question is whether he is -- it is his  
17    opinion that, as a matter of law, the Kentucky ICA is  
18    a new or existing telecommunications service within  
19    the meaning of Section 13-801(a) of the Illinois  
20    Public Utilities Act, I will object to that as  
21    calling for a legal conclusion.

22            [!EZ SPEAKER 01]: I did not mean to ask that

1 question, Mr. Harvey. I'm going to the next sentence  
2 in 13-801(a).

3 BY [!EZ SPEAKER 01]:

4 Q In essence, do you agree, Mr. Hoagg, that  
5 letting Sprint port the Kentucky ICA will help  
6 develop competition in Illinois?

7 A Yeah, that's a broad question. I have no  
8 reason to think otherwise.

9 Q There must be some reason for Sprint to  
10 want to port the Kentucky ICA to Illinois; right?

11 A Yeah, the reason I hesitate is at least --  
12 I mean, put yourself in my position, you know, as a  
13 Staffer. It is at least conceivable that Sprint  
14 wants to port this thing for a specific reason that  
15 in no way would -- you know, if we could be  
16 omniscient about it, in no way would benefit  
17 consumers in Illinois or promote competition or  
18 anything else. It's at least conceivable that that's  
19 the case. Okay. So that's my hesitation.

20 You know, I don't know all of the  
21 reasons, you know, why Sprint wants to port this.  
22 There are any -- presumably there are multiple

1 reasons. We certainly are aware of some of them.

2 But, you know, with that caveat,  
3 there, you know -- one -- that there is some kind of  
4 presumption that -- yes, when a competitor wants to  
5 avail itself of this merger commitment, for example,  
6 that in doing so, you know, it's sort of the  
7 invisible hand argument. In doing so, it's doing so  
8 for its own purposes, but that that will ultimately  
9 redound to the benefit of the citizens of Illinois in  
10 some fashion or another.

11 But there can be many a slip between  
12 the cup and the lip.

13 MR. HARVEY: We can take administrative notice  
14 of that fact.

15 BY MR. SCHIFMAN:

16 Q Mr. Hoagg, are you only testifying  
17 regarding -- as far as the substantive provisions of  
18 the Kentucky ICA, are you only offering testimony on  
19 the bill and keep provision and the facilities  
20 sharing provisions or are there other provisions that  
21 you feel qualified to give testimony about?

22 A Well, I have only testified thus far I

1 think to those two areas.

2 MR. HARVEY: Then I would add, he only will  
3 testify to two areas as a result of that fact.

4 THE WITNESS: However, I feel qualified to talk  
5 about just about anything. But that's -- putting  
6 that issue aside, I do expect that -- yeah, my  
7 testimony is quite narrow to this point.

8 I do expect that -- now, that this --  
9 you know, that the record is much more developed than  
10 at the time I even submitted my reply testimony -- I  
11 can't swear to this -- but I do expect that Staff  
12 will in brief be addressing several issues that we  
13 have not addressed -- that were not addressed in my  
14 testimony. I believe that's permissible. And  
15 assuming it is, I do expect we will do that.

16 BY MR. SCHIFMAN:

17 Q Which areas are those?

18 A Well --

19 MR. HARVEY: I would object to that. I think  
20 it gets into areas of Staff litigation strategy that  
21 are clearly not to be discussed here.

22 JUDGE DOLAN: I'd sustain that objection.

1 BY MR. SCHIFMAN:

2 Q Regarding facilities sharing, are you aware  
3 that the Kentucky ICA has a facilities sharing  
4 provision in it?

5 A Yes.

6 Q Okay. And do you have any -- well, did you  
7 hear AT&T today testify that they are operating under  
8 the Kentucky ICA with Sprint in Kentucky?

9 A I remember that vaguely.

10 Q Okay. Do you have any reason to doubt that  
11 Sprint and AT&T Kentucky are not implementing the  
12 facilities sharing provision in Kentucky?

13 A No, I have no reason to doubt that.

14 Q Okay. Since it's being done in Kentucky,  
15 is it technically feasible to be done here in  
16 Illinois?

17 A I would say. I mean, you know -- I mean,  
18 absent anything compelling to show otherwise, yeah,  
19 I'm not aware of any reason to think or to suggest  
20 that it wouldn't be technically feasible.

21 Q And haven't seen anything compelling  
22 otherwise yet, have you?

1           A     To suggest that it's technically  
2     infeasible, no. I mean, that's a pricing matter.

3           MR. SCHIFMAN: Well, I'll move to strike that  
4     last piece. We'll get into that.

5           MR. HARVEY: I'm okay with that.

6           JUDGE DOLAN: I will sustain that.

7           MR. SCHIFMAN: Off the record.

8                                 (Whereupon, a discussion was had  
9                                 off the record.)

10    BY MR. SCHIFMAN:

11           Q     Mr. Hoagg, would your answer be the same  
12     for bill and keep?

13           A     Yes.

14           Q     Mr. Hoagg, I'm going to Page 10 of your  
15     direct testimony.

16           A     Okay.

17           Q     And are you there?

18           A     Yeah.

19           Q     And towards the bottom you talk about  
20     state-specific pricing; right?

21           A     Yes.

22           Q     Okay. And on Lines 249 through 251, you



1 provide an answer and you say, Any prices, comma,  
2 price structures or pricing provisions not consistent  
3 with -- and then it goes on. Is there anything in  
4 Merger Commitment 7.1 that says "price structures"?

5 MR. HARVEY: We'll stipulate that there is no  
6 specific mention of the word -- the phrase "price  
7 structure" in Merger Commitment 7.1.

8 [!EZ SPEAKER 01]: Okay. I'll accept that  
9 stipulation.

10 BY MR. SCHIFMAN:

11 Q Okay. And let's move up a little bit on  
12 Page 10, Lines 240 through 242. You state, for  
13 example, The laws and regulations of Illinois must be  
14 examined and applied, hyphen, not those of Kentucky;  
15 right?

16 A Yes.

17 Q Mr. Hoagg, do you agree that there is no  
18 law in Illinois preventing carriers from voluntarily  
19 negotiating a bill and keep arrangement?

20 A Yeah, there's no such law I'm aware of, nor  
21 is there any such regulation I'm aware of.

22 Q Okay. And would your answer be the same

1 for facility sharing?

2 A Yes.

3 Q Is it your understanding, Mr. Hoagg, that  
4 parties in interconnection agreements voluntarily  
5 agree to provisions that may differ from the results  
6 of an ICC arbitration decision?

7 A Sure, it happens all the time.

8 Q And that's not against Illinois law for two  
9 parties to voluntarily negotiate a provision that  
10 differs from the way that matter was resolved in an  
11 interconnection arbitration in Illinois?

12 A And we're -- just to clarify the context  
13 with the question, the context of the question is  
14 they voluntarily negotiate something and bring that  
15 provision along with whatever else to the Commission  
16 for its approval?

17 Q Correct.

18 A Correct. Yeah, absolutely. That happens  
19 all the time.

20 Q Is it your understanding, Mr. Hoagg, that  
21 parties could negotiate a bill and keep arrangement  
22 regardless of the balance of traffic that they trade

1     between one another?

2             A     Certainly, that's my understanding.

3             Q     And the parties could submit that for  
4     approval to the Illinois Commerce Commission; right?

5             A     Yeah, and certainly have, some have.

6             Q     Would you ever recommend the Commission to  
7     reject freely negotiated, between two parties, bill  
8     and keep provisions and facilities sharing  
9     provisions?

10            A     The only thing that would lead me  
11     personally to recommend that would be, you know,  
12     pursuant to the strictures that the Commission is  
13     under to -- you know, by which it should examine  
14     these things.  So if there were some reason, which, I  
15     mean, I suppose one can conceive of some circumstance  
16     wherein such an arrangement -- such a negotiated  
17     agreement might come before the Commission with those  
18     kind of provisions.  And there might be something in  
19     there that somehow or other the Commission would  
20     conclude somehow or other violates the public  
21     interest.

22                         So it's at least conceivable that the

1 Commission could turn thumbs down, but it would have  
2 to be something like that.

3 Q And this in this case -- this is going to  
4 be a hypothetical. If the parties, Sprint and AT&T,  
5 had just gotten together and negotiated an  
6 interconnection agreement --

7 MR. HARVEY: Hypothetically.

8 BY MR. SCHIFMAN:

9 Q Hypothetically. Right. That's a huge  
10 hypothetical at this point in time -- and it had the  
11 50/50 facilities sharing provision in it that Sprint  
12 presented in its Exhibit 2.1 and it had a bill and  
13 keep arrangement like Sprint has presented in its  
14 Exhibit 2.1 --

15 A Right.

16 Q -- would you ever recommend to the  
17 Commission that that -- that those provisions not be  
18 inserted into a freely negotiated interconnection  
19 agreement?

20 A I'm going to give you -- let me answer that  
21 just by trying to give you a hypothetical so you  
22 see -- I mean, so I can answer -- I'm not trying to

1     dodge the question. But there are at -- one can  
2     conceive of some weird reason why that might happen.  
3     Well, it would have to be something that, again,  
4     rises to the level of what I talk about.

5                     For example, just totally  
6     hypothetically, suppose they -- suppose we had  
7     symmetrical recip comp rates, traffic was way out of  
8     balance, and they did bill and keep -- they came to  
9     the Commission with bill and keep with 50/50 facility  
10    sharing. But then we -- the Commission, you know,  
11    somehow uncovered that, Well, they did that because  
12    the party that was going to owe a lot of money agreed  
13    in some kind of side agreement to bump somebody off  
14    for the other carrier. Okay. Well, the Commission  
15    probably wouldn't approve it. Okay.

16                    So, you know, it would take something  
17    like that; but barring something like that, no, the  
18    Commission would approve.

19            Q     All right. Discrimination towards other  
20    carriers, for example?

21            A     Yeah, discrimination or, you know, again,  
22    public interest I think the Commission would say,

1 Well, you got an agreement where somebody's going to  
2 kill somebody, that's probably not in the public  
3 interest. We won't approve it.

4 MR. FRIEDMAN: Although, we can't be sure.

5 THE WITNESS: Yeah, it depends on the person.

6 MR. HARVEY: And if the vote were 4 to 1 it  
7 would be a little bit embarrassing.

8 But I'm sorry, Mr. Schiffman.

9 THE WITNESS: But under most --

10 MR. HARVEY: There is no question pending.

11 BY MR. SCHIFMAN:

12 Q Let's move to Page 13 of your direct  
13 testimony, the top. Well, I guess we can start on  
14 the bottom of Page 12. It's the question, Is  
15 reciprocal compensation rate state-specific pricing  
16 as that term is used in FCC Merger Commitment 7.1?  
17 And then you mention that AT&T in your response to  
18 that question has reciprocal compensation rates set  
19 forth in its tariffs, right, on Lines 318 to 320?

20 A Yes. Right. Correct.

21 Q And because AT&T is tariff reciprocal  
22 compensation rates, those are the state-specific

1 rates that you're talking about?

2 A No. I mean, to be honest, you know, that's  
3 a throwaway sentence.

4 Q Which one?

5 A AT&T Illinois has recip comp rates. I  
6 mean, that stands for -- I mean, that's just a  
7 statement of fact. Nothing more. I don't -- sitting  
8 here looking at my testimony right now, I have to say  
9 my own opinion is that neither adds nothing nor  
10 detracts.

11 Q But you acknowledge that AT&T has a tariff  
12 for their recip comp rates; right? And you attach  
13 those to your testimony.

14 A Right. And I think -- the significance of  
15 that in my mind -- and the reason that I pointed that  
16 out and attached it is that those are Illinois  
17 tariffs. So there you have -- you know, there's  
18 just -- it's just a fact. There's an Illinois tariff  
19 that is a recip comp rate. It's a number. Seems to  
20 be -- you know, it just drives home the fact that  
21 reciprocal compensation rates are, in this case at  
22 least, Illinois state-specific.

1           Q     Did you hear AT&T's witness McPhee testify  
2     that they are not proposing to utilize the Illinois  
3     state-specific reciprocal compensation rate as the  
4     recip comp rate in its agreement?

5           A     I vaguely recall that. I mean -- yes.

6           Q     And so AT&T, is it your understanding, is  
7     proposing a dollar sign .0007 rate for reciprocal  
8     compensation?

9           A     Right, that's my understanding.

10          Q     Is that rate state-specific?

11          A     I'd have to look at that. I didn't look at  
12     that in my preparation for this testimony or cross.  
13     But if I can just remind you of what -- you know,  
14     when I use the term "state-specific," it's different  
15     than just about everybody else in this room.

16                     Remember from my point of view, I  
17     would -- remember, my point of view is policy. And I  
18     would urge the Commission to have the following  
19     interpretation when it applies Merger Condition 7.1.  
20     Every rate that comes into Illinois goes through that  
21     screen, and it's got to be state-specific in some  
22     fashion -- in some -- by some meaning. Okay.



1                   For example, you take a rate that's in  
2     the Kentucky agreement, you look at it, some rate.  
3     And if it's totally consistent with everything we do  
4     here in Illinois, it doesn't violate any -- you know,  
5     it's totally consistent, then it comes in and it's an  
6     Illinois rate. It's not a Kentucky rate in the  
7     agreement, it's an Illinois rate in the agreement.

8                   That's how I apply that condition and  
9     that's how I recommend that the Commission apply it.

10            Q     So for unbundled network elements, for  
11     example, a two wire loop -- a two-wire loop in  
12     Kentucky has a price of X, and a two-wire loop in  
13     Illinois has a price of Y. It would be your  
14     testimony that the Illinois price of Y should be the  
15     one that is utilized here; correct?

16            A     All else equal, yes.

17            Q     Okay. And in Kentucky we had an ICA where  
18     we had rates for reciprocal compensation contained in  
19     it. Did you know that?

20            MR. HARVEY: I guess I would ask for some  
21     clarification. In Kentucky, we -- I assume "we" is  
22     Sprint.

1           [!EZ SPEAKER 01]: Bad question. Let me  
2 rephrase it, Mr. Harvey.

3 BY MR. SCHIFMAN:

4           Q     Are you aware, Mr. Hoagg, that in the  
5 Kentucky ICA that Sprint has entered into with AT&T  
6 Kentucky that there are rates for reciprocal  
7 compensation in that agreement? That there is a  
8 Kentucky-specific reciprocal compensation --

9           A     I guess I might be vaguely aware of that.  
10 I mean, you'll understand my difficulty as it's  
11 certainly my understanding that you don't charge each  
12 other that rate.

13          Q     Right. But there is a rate nonetheless is  
14 your understanding?

15          A     I understand that there -- yeah, I'll  
16 answer "yes" to that, although, it's pretty vague.

17          Q     Okay. So in Illinois, there could be rates  
18 that are tariffed for reciprocal compensation; right?

19          A     Yes.

20          Q     And the parties could otherwise agree that  
21 they don't want to charge each other those rates,  
22 they can do bill and keep; right?

1           A     Absolutely.  Absolutely.  I agree with  
2     that.

3           Q     Okay.

4           [!EZ SPEAKER 01]:  I'd like to mark this as  
5     Sprint Cross-Exhibit 4.

6                                 (Whereupon, Sprint Cross-Exhibit  
7                                 No. 4 was marked for  
8                                 identification.)

9     BY [!EZ SPEAKER 01]:

10          Q     Do you have what's marked now Sprint  
11     Cross-Exhibit 4 in front of you, Mr. Hoagg?

12          A     Right.

13          Q     Okay.  And I'll represent to you that this  
14     is an attachment -- well, it's the cover pages and  
15     Attachments 3 of the Kentucky ICA.  Okay?

16          A     Okay.

17          Q     Does it look like provisions from an  
18     interconnection agreement to you?

19          A     Looks like it.

20          Q     As dense as all those provision may be;  
21     right?

22                                 In it -- on the back of that

1     Attachment 3, there's a bunch of rate sheets. Do you  
2     see those?

3             A     Yes.

4             Q     And it says, Local interconnection at the  
5     top, hyphen, Alabama, on the first rates sheet. Do  
6     you see that?

7             A     Yes, I'm there.

8             Q     Okay. And do you see really under the  
9     first category of "charges" it says, Local  
10    interconnection call transport and termination?

11            A     Yes.

12            Q     And do you see under "tandem switching,"  
13    there appear to be some charges or rates that looks  
14    like, BellSouth Kentucky could charge for reciprocal  
15    compensation. Do you see that?

16            A     In Alabama.

17            Q     In Alabama. I'm sorry. I said Kentucky.

18            A     It appears that way.

19            MR. HARVEY: Assuming that -- well, go ahead.

20    BY MR. SCHIFMAN:

21            Q     Okay. And do you see that the note above  
22    tandem switching. Could you read that, please.

1           A     Note, BK in parentheses, beside a rate  
2     indicates that the parties have agreed to bill and  
3     keep for that element pursuant to the terms and  
4     conditions in Attachment 3.

5           Q     So it looks like in Alabama there's rates  
6     for tandem switching, but there -- and then if you go  
7     down even it said "for common transport," but there  
8     are "BK" notations next to it; right?

9           MR. HARVEY:   Well, at this point, once we've  
10    gotten to that question, I will have to object.   I  
11    think it's one thing to have Mr. Hoagg refer to this  
12    document.   It's another to suggest without laying a  
13    foundation that Mr. Hoagg's ever seen this document  
14    or this rate sheet.

15                   That it stands for the proposition  
16    that this is a definitive -- that this is a --  
17    delineates the legal rates between two parts in a  
18    state, not Illinois.   And I think I would object  
19    based on foundation.

20           MR. SCHIFMAN:   Okay.   I'll withdraw the  
21    question.

22           JUDGE DOLAN:   Okay.

1 BY MR. SCHIFMAN:

2 Q Do you see, Mr. Hoagg, that it appears that  
3 there are different pages for each state for local  
4 interconnection rates? There's a Florida local  
5 interconnection, a Georgia local intersection page --  
6 or pages, Louisiana and so on.

7 A Right, I see that.

8 Q And these all appear to be rate sheets to  
9 the BellSouth ICA between Sprint and AT&T?

10 A That's what they appear to be.

11 [!EZ SPEAKER 01]: I'd like to move for  
12 admission of Sprint Exhibit 4.0.

13 MR. HARVEY: I will object to that. I think  
14 the one question that was never asked of Mr. Hoagg is  
15 had he ever seen this before. And, again, I have no  
16 reason to doubt that counsel's representation that  
17 is, in fact, an intersection agreement and the terms  
18 and conditions are such as represented herein. I  
19 just don't think Mr. Hoagg can sponsor it.

20 [!EZ SPEAKER 01]: Can Mr. Hoagg look at the  
21 first page of the agreement?

22 MR. HARVEY: We're there.

1 BY [!EZ SPEAKER 01]:

2 Q And what does it say this interconnection  
3 agreement -- who are the parties to it?

4 A And if you'd like me to just read that, it  
5 said, Buying between BellSouth Telecom, Inc., and  
6 Sprint Communications Company, L.P.,  
7 Sprint Communications Company, L.P., Sprint Spectrum,  
8 L.P.

9 MR. FRIEDMAN: Could we go off the record?

10 JUDGE DOLAN: Off the record.

11 (Whereupon, a discussion was had  
12 off the record.)

13 BY MR. SCHIFMAN:

14 Q Mr. Hoagg, did you review Sprint's  
15 complaint and attached exhibits?

16 A Yes.

17 Q Okay. And do you recognize the Kentucky  
18 ICA with its attachments as part of the exhibits that  
19 Sprint provided in this complaint?

20 A Yes.

21 Q And do you have any reason to doubt that  
22 the Exhibit 4.0 that I handed you is not part of that

1 exhibit attached to Sprint's complaint?

2 A No.

3 [!EZ SPEAKER 01]: We don't need to admit 4.0  
4 because it's already part of the record -- or  
5 attached to our complaint. Excuse me. We'll argue  
6 if it's part of the record.

7 Mr. Harvey, will you withdraw your  
8 objection based on the foundation that we just laid?

9 MR. HARVEY: Well, I still don't think he said  
10 that he's ever seen this particular document in the  
11 form he presented it. To the extent it's already  
12 part of the record, I guess we can go ahead and do  
13 this.

14 [!EZ SPEAKER 01]: Okay.

15 [!EZ SPEAKER 05]: And before we go any farther  
16 down this line we will stipulate that various things  
17 say "BK" next to them and we will accept your  
18 representation that that stands for bill and keep.

19 Now, is that going to be satisfactory  
20 to avoid further examination on this or do we have to  
21 go through it?

22 MR. SCHIFMAN: That's satisfactory.



1           MR. HARVEY:   Fine.   Thank you.   I apologize, by  
2   the way.

3           JUDGE DOLAN:   All right.   Then at this point is  
4   this being offered to be admitted in the record or  
5   not?

6           MR. SCHIFMAN:   We believe it's part of the  
7   record already.

8           MR. FRIEDMAN:   Off the record.

9                               (Whereupon, a discussion was had  
10                              off the record.)

11          MR. HARVEY:   I guess to the extent it matters,  
12   Staff will withdraw any objection it has to the  
13   admission to this.   We will also stipulate that it  
14   says what it says.   And to the extent that we will  
15   accept counsel's reputation that where the words "BK"  
16   appear next to a rate, that means that those rates  
17   are, indeed, rates upon which the parties have agreed  
18   to a bill and keep arrangement with respect to those  
19   particular rates.

20          JUDGE DOLAN:   All right.

21   BY MR. SCHIFMAN:

22          Q     So in general, Mr. Hoagg, do you agree that

1 in Illinois there are rates for reciprocal  
2 compensation that are set either according to tariff  
3 or the FCC's ISP remand order rate of .0007 and  
4 parties nonetheless agreed to bill and keep  
5 arrangements?

6 A Yes, I agree. That is correct. That's  
7 certainly my understanding.

8 Q Okay. Page 14 of your testimony, Lines 336  
9 to 341 is where I'm going to focus your attention.

10 A Yeah.

11 Q Basically, you're talking about roughly  
12 balanced traffic as something that is central to any  
13 consideration of bill and keep reciprocal  
14 compensation?

15 A Correct.

16 Q Is that only true being central to any  
17 consideration if a Commission imposes bill and keep  
18 upon a party pursuant to an arbitration?

19 A Well, I was with you up to the last clause.  
20 It is certainly in my opinion -- well, it's my  
21 opinion that it's -- at minimum, it's central to any  
22 consideration of bill and keep if the Commission is

1 considering or being asked to impose bill and keep on  
2 two parties over one party's objection. That's my  
3 position on it at this point.

4 Q Okay. And you say, This true generally and  
5 true specifically in Illinois. What are you  
6 specifically referring to in Illinois?

7 A The cases that we do have, we have a couple  
8 of cases where -- we have at least one arbitration.  
9 And, I mean, the case -- you know, the case history  
10 and is sort of spotty. And every time the  
11 Commission -- certainly my understanding -- that  
12 every time the Commission -- this question of bill  
13 and keep that I can -- you know, that I'm aware of  
14 has been raised in front of the Commission, the  
15 Commission has considered one way or another there's  
16 been discussion by the Commission in its order of  
17 traffic balance. So that's the major reason I say  
18 that.

19 Q Has the Commission opined what the dividing  
20 line is for roughly balanced traffic in Illinois?

21 A It has -- that's a general question. I  
22 mean, it has blessed traffic of various balance --

1     you know, splits in the context of negotiated  
2     agreements that have come to it for approval.  Okay.  
3     And to my understanding, I don't think it's ever  
4     rejected any one of those things.  It's blessed a  
5     number of those, at least a handful of those, saying  
6     we approve that that have had different traffic  
7     splits.

8                     Could you repeat the question.

9             Q     Okay.  That answers my question partially.  
10                    What about in a contested setting?

11     Has the Commission set a hard dividing line as to  
12     what is considered roughly balanced for reciprocal  
13     compensation purposes?

14             A     The way you phrase that question, my answer  
15     is "no."

16             Q     Okay.  I believe this is a topic that your  
17     attorney asked some questions of AT&T's witness of  
18     earlier.  And it regards what we'll refer to as  
19     intraMTA traffic.  So it's within an MTA and it's  
20     dialed 1-plus routed through an interexchange  
21     carrier.  Do you believe that type of traffic is  
22     subject to reciprocal compensation in Illinois?

1           [!EZ SPEAKER 05]: I'm not sure that's within  
2     the scope of his testimony. You know, I mean, he  
3     didn't -- I don't see where he testifies as to how  
4     jurisdictionally segregate traffic or go to that  
5     level of detail. I guess I object on that basis,  
6     although -- that's my objection.

7           MR. SCHIFMAN: And my response to that  
8     objection, your Honor, is that Mr. Hoagg opines about  
9     the imposition of -- it basically says roughly  
10    balanced needs to be considered. And I'm trying to  
11    figure out what is included in his definition of  
12    "roughly balanced," whether intraMTA 1-plus dialed  
13    traffic fits within that definition.

14          MR. HARVEY: And I would merely add that that's  
15    sort of is another basis for objection is that --  
16    it's Staff's view that it's a legal question as to  
17    how you jurisdictionally determine whether this  
18    traffic is subject to bill and keep. Now, Mr. Hoagg  
19    has -- or, rather, subject to reciprocal  
20    compensation. And I don't think, first of all, it's  
21    within the scope of his testimony. Second of all, I  
22    think it calls for a legal conclusion. And I don't

1 believe it's a question that he, you know, is --  
2 should have to answer under those circumstances.

3 MR. SCHIFMAN: Well, Mr. Hoagg's testimony  
4 discusses fundamentally Sprint needs to show -- and  
5 this is in response to the conditions he lists as to  
6 what Sprint needs to show, Traffic exchange by the  
7 parties would be roughly balanced. I'm trying to  
8 determine what he means by "roughly balanced," if a  
9 certain type of traffic should be included in that  
10 definition of roughly balanced.

11 MR. HARVEY: And I guess his opinion on it is  
12 valuable as my opinion on it, which is to say not  
13 valuable at all. Because it's a legal conclusion.  
14 It's a legal determination that is going to -- that's  
15 been made by Courts and by this Commission, and  
16 presumably will have to be made again by this  
17 Commission. So...

18 JUDGE DOLAN: All right. I'll sustain the  
19 objection.

20 BY MR. SCHIFMAN:

21 Q Mr. Hoagg, I passed out a document to you  
22 earlier that is a Verizon wireless complaint

1 proceeding.

2           [!EZ SPEAKER 05]: And for the record, Counsel,  
3 we're referring to the decision -- the Commission's  
4 order in Docket No. 04-0040.

5           MR. SCHIFMAN: That's true.

6           MR. HARVEY: We have that before us and we  
7 appreciate your courtesy in giving it to us several  
8 hours before you proposed to use it.

9 BY [!EZ SPEAKER 01]:

10           Q And, Mr. Hoagg, you have before you  
11 Illinois Commerce Commission Decision 04-0040; right?

12           A I have a decision in that docket. I'm sure  
13 it's the one we're talking about, April 7th, 2004?

14           Q Correct.

15           A Got it.

16           Q And Staff took a position in that case --  
17 let me strike that.

18                       Do you recall this case?

19           A I recall I was not involved in it at all.  
20 I recall, you know, the general time frame and I  
21 recalled some discussion -- a hallway discussion of  
22 the case. But I was not involved in it, and really

1 at the time I think, as practice, I really was not  
2 aware of the specific issues on the case.

3 Q Okay. And are you aware generally that  
4 this was a complaint proceeding regarding wireless  
5 termination tariffs that certain rural ILECs filed  
6 and certain wireless carriers objected to?

7 A I'm aware of that, yes.

8 Q Okay. And there's a statement of Staff's  
9 position in this document, is there not?

10 A Correct.

11 Q Do you disagree, sitting here today, with  
12 Staff's position as listed here in the document?

13 A Well --

14 MR. HARVEY: If I could ask counsel -- no, go  
15 ahead, if you want to answer.

16 THE WITNESS: Because without a more  
17 specific -- I think probably we were thinking along  
18 the same lines -- without a more specific question,  
19 you'd have to bear with me, I'd give you a fairly  
20 lengthy answer.

21 MR. HARVEY: Maybe.

22 [!EZ SPEAKER 01]: Let me break it down a



1     little bit.

2           MR. HARVEY:   Are there specific portions of  
3     Staff's decision that you'd like him to not disagree  
4     with -- or Staff's opinion that you'd like him to not  
5     disagree with?   And if you could point to those,  
6     maybe --

7           [!EZ SPEAKER 01]:   Certainly.

8     BY MR. SCHIFMAN:

9           Q     Do you disagree with the statements, CMRS  
10    providers not obligated to pay terminating access to  
11    the rural ILECs for traffic that is initiated and  
12    terminated within the same MTA; Staff asserts that  
13    CMRS providers are instead obligated to pay and  
14    entitled to receive reciprocal compensation?   Do you  
15    disagree with that statement listed under Staff's  
16    position in the Commission order in 04-0040?

17          [!EZ SPEAKER 05]:   And accepting that his  
18    answer would be sort of limited to the facts and  
19    circumstances obtaining there as set forth in the  
20    prefatory portions of the order?

21          [!EZ SPEAKER 01]:   Well, I guess, I'm asking  
22    him today, what -- does Staff have any difference of

1 position on the statements that I just read to  
2 Mr. Hoagg?

3 THE WITNESS: Can we -- before we go any  
4 further, can we make sure we're talking about the  
5 same two sentences, CMRS providers are not obligated  
6 to pay terminating access to the rural ILECs for  
7 traffic that's initiated, terminating the same MTA --  
8 BY [!EZ SPEAKER 01]:

9 Q Yes.

10 A -- Staff asserts that CMRS are instead  
11 obligated to pay and entitled to receive recip comp.

12 Q Those are the sentences, yes.

13 A Sitting here right now, I have no reason to  
14 disagree with that statement.

15 Q Okay.

16 MR. HARVEY: Although, I don't think there are  
17 any rural ILECs involved in this proceeding. So...

18 MR. SCHIFMAN: Wait. Time out. Are you adding  
19 to Mr. Hoagg's answers, Mr. Harvey?

20 MR. HARVEY: No, I'm just suggesting that rural  
21 ILEC -- there are no rural ILECs here. You may --  
22 no, don't worry about it. Go ahead.

1           MR. SCHIFMAN: I'll stipulate that there are no  
2 rural ILECs in this room.

3 BY MR. SCHIFMAN:

4           Q     Read the next paragraph to yourself,  
5 Mr. Hoagg. Tell me when you're finished, please.

6           A     Paragraph beginning, Recip comp --  
7 reciprocal compensation set on a bill and keep basis  
8 is perfectly lawful, that paragraph?

9           Q     Yes.

10          A     Done.

11          Q     Do you agree today that that is an accurate  
12 description of a bill and keep arrangement?

13          A     I have what -- with one possible exception,  
14 one sentence. There's one sentence that I do not  
15 know is factually correct so I have real -- I'm  
16 hesitant to agree with that. I agree with every  
17 sentence there, but save the last one.

18                     And, again, this is factual question.  
19 Staff agrees -- at that time Staff involved in this  
20 case agreed with the CMRS carriers in that case, the  
21 bill and keep arrangement are the norm throughout the  
22 nation.

1           Q     Okay.

2           A     So I'll certainly agree with all the  
3     statement -- all the sentences in that paragraph with  
4     the possible exception of that one.

5           Q     Okay. Can you turn to Page 6 of that  
6     document, please. Now, we're going under Commission  
7     analysis.

8           A     Got it.

9           Q     Forget it. We don't need to discuss that.  
10    We'll move on.

11                     Mr. Hoagg, you know, to the best of  
12    your ability, is this a Section 252 arbitration  
13    proceeding that we're involved in?

14          A     I thought Mr. Harvey was talking about  
15    ducks earlier; but, no. Well, you know, no.  
16    Certainly it's my understanding that as far as its  
17    legal posture, it's not. But it certainly is true  
18    that there are many similarities between parts of  
19    this case and an arbitration; but, no, this is not a  
20    legal -- it's my understanding as a nonlawyer, this  
21    isn't a 252 arbitration.

22          Q     Okay. On Page 15 of your direct testimony

1     you -- basically, I don't know. How would you  
2     characterize these two items in Lines 365 to 371, A  
3     and B? Those are things that needs to show -- that  
4     Sprint needs to show; right? And what does Sprint  
5     need to show -- if Sprint shows these things, what is  
6     the result, is my question?

7             A     Well, my intent here -- what I intended to  
8     convey was in this 365 to 371 deals with bill and  
9     keep, essentially. So I think -- I mean, to reduce  
10    it, if Sprint prevails on its desire to import the  
11    bill and keep aspect, it's got to show rough traffic  
12    balance or it's got to show that that kind of rough  
13    traffic balance is not required for the Commission to  
14    impose bill and keep over AT&T -- in this case,  
15    AT&T's objection.

16                   And, of course, this language -- this  
17    discussion, you know, is all in the context of  
18    symmetrical recip comp rates.

19             Q     Are the two conditions that you list here,  
20    A and B on Page 15 of your direct testimony, are  
21    those contained at all in Merger Commitment 7.1?

22             MR. HARVEY: We'll agree that they're not. I

1 mean, they're not specifically set forth in the  
2 language of Merger Commission 7.1. Whether they're,  
3 you know, subsumed in some other way, is a legal  
4 matter that I think we'll address later.

5 MR. SCHIFMAN: I would move to strike Mr.  
6 Harvey's comments. I'm asking the witness for his  
7 responses. I'm not asking Mr. Harvey for responses.

8 JUDGE DOLAN: I'll sustain that.

9 MR. HARVEY: Fair enough.

10 MR. SCHIFMAN: Could you answer my question,  
11 please, Mr. Hoagg?

12 THE WITNESS: Could you repeat.

13 BY MR. SCHIFMAN:

14 Q Are the conditions that you list on Page 15  
15 of your direct testimony, A and B, are those  
16 contained in Merger Condition 7.1?

17 A No, they are not there in black in white.  
18 They are my understanding and my opinion as to what's  
19 required for application of the state-specific  
20 pricing condition. That's my opinion.

21 Q Okay. And roughly balanced, in your view,  
22 is what in terms of the way you use that phrase on

1 Line 366?

2 A You know, in response to an earlier  
3 question, I think we -- I agreed with your  
4 proposition, I think you put forward a proposition  
5 that the Commission had not articulated a hard and  
6 fast metric on what roughly balanced traffic is.  
7 Okay.

8 Could you repeat the question.

9 [!EZ SPEAKER 01]: Could you repeat it, please.

10 (Whereupon, the record was read  
11 as requested.)

12 THE WITNESS: That is, the Commission has not  
13 set a hard-and-fast metric that is  
14 case-and-circumstance-specific. So that just for  
15 illustration, whatever -- you know, whatever the  
16 traffic split numbers are that are being bounced  
17 around in this case, okay, the Commission -- it's my  
18 view and certainly my understanding the proper  
19 application of all the stuff we're talking -- the  
20 merger requirement and so forth -- or the merger  
21 commitment requires -- the Commission would look at  
22 all the facts and circumstances surrounding that and

1     come to a determination as to what the actual traffic  
2     split is and whether or not that traffic split meets  
3     the Commission's requirement, slash, definition of  
4     roughly balanced. And that's a case specific  
5     determination.

6     BY MR. SCHIFMAN:

7             Q     So you're not offering an opinion here  
8     today as to what that percentage should be?

9             A     I did not testify in my testimony as to  
10    what that percentage should be. And I'm not offering  
11    it today.

12                   I do expect that Staff address that in  
13    brief. We've had a lot more, you know, testimony.  
14    The record has been much developed since the time I  
15    wrote this.

16                   I will say that I did indicate what I  
17    believe is one significant consideration in the  
18    Commission's determinations with respect to that.  
19    And that's in my reply testimony where I testified  
20    that the issue -- that the transactions cost, the  
21    magnitude of the transactions cost is an important  
22    element of that decision calculus.



1           Q     That shouldn't be the only element in the  
2     decision calculation?

3           A     No.  No, I said that there are -- you know,  
4     all facts and circumstances, that's -- I testified to  
5     that particular one.  That's an important one, but I  
6     would not advocate to the Commission that that's the  
7     only thing that I look at.

8           Q     And do you disagree with any of the  
9     elements that Sprint witnesses, Farrar and Felton,  
10    put in in their testimony -- well, let me stop and  
11    ask you:  Did you read the testimony of Sprint  
12    witnesses Farrar and Felton?

13          A     Yes, I did.

14          Q     Do you understand them to have listed some  
15    reasons why companies may agree to bill and keep?

16          A     Yes, but I don't -- I've always to this  
17    point taken the position that that is not  
18    particularly relevant because we're not talking about  
19    a voluntary agreement here.  We're talking about  
20    imposition of bill and keep over one party's  
21    objection.  Different kettle of fish.

22          Q     Are we talking about the Commission

1     enforcing a merger commitment that AT&T made to get  
2     its merger approved with the FCC?

3           A     Yes. Well, that's -- as we said before, I  
4     mean as we -- as asked before, that's a key central  
5     component in this case. And all the discussion of  
6     these questions, in my view, surrounds the question  
7     of proper application of the state-specific  
8     requirement -- of state-specific pricing requirement  
9     or condition of that merger.

10          Q     So you say imposing bill and keep, in your  
11     mind, means that's because it's a state-specific  
12     pricing requirement under Merger Commitment 7.1 or  
13     something else?

14          A     No, we have -- this is my understanding of  
15     the circumstance, we have Sprint seeking importation  
16     pursuant to Merger Commitment 7.1. Merger Commitment  
17     7.1 contains, of course, the states specific pricing.  
18     So if bill and keep is to come in to this state, it  
19     has to be what -- all aspect -- the pricing aspect --  
20     that's a pricing -- see you and I differ on that.  
21     That's a pricing regime. Okay. And to my  
22     understanding has to meet the Commission's

1 requirement, slash, rule, slash, regulation, slash,  
2 policy about bill and keep reciprocal compensation  
3 pricing.

4 And it has to -- and the reason the  
5 imposition over one party's objection is crucial is  
6 because that would look a lot different. That  
7 decision-making by the Commission would look a lot  
8 different if the two parties voluntarily were  
9 agreeing to the bill and keep import.

10 Q So, in your mind, the difference relates to  
11 somebody's objecting to bill and keep here?

12 A That's not the only difference, but that is  
13 a -- that is a material fact in this case, in my  
14 view.

15 Q Okay. Let's move down to facilities  
16 sharing in the next paragraph. Did you hear AT&T's  
17 witness earlier say that facilities sharing isn't  
18 necessarily -- doesn't necessarily relate to balance  
19 of traffic, but it's how the parties allocate their  
20 costs for using interconnection facilities?

21 A Yes, I heard that testimony.

22 Q Okay. So do you think that the parties

1     need to show that their traffic is roughly balanced  
2     in order to have facility sharing?

3             A     Hold on one second.

4                     Certainly as a technical matter, no.  
5     Okay.  Here's my understanding of that -- you know,  
6     what that witness testified to -- and I agree with --  
7     that conceptually what we're talking about here is we  
8     have facilities that are -- we have joint-used  
9     facilities, and there are any number of ways to price  
10    those facilities; that is to -- if those are  
11    joint-use, really it's a matter of allocating the  
12    cost of those facilities, okay, the total cost of  
13    those facilities.

14                    And I think the correct way -- or the  
15    better way -- maybe the best way to articulate the  
16    principle involved is proportionate use, so that the  
17    party that is more heavily using the traffic -- you  
18    know, sending traffic over those facilities would pay  
19    a -- you know, would pay more -- a greater percentage  
20    of the total.  So, in fact, it's -- I think that's  
21    the best way to express it, it's proportional in some  
22    fashion to the use.

1                   Now, when I wrote this testimony,  
2    traffic balance -- the traffic split, I was thinking  
3    of in terms of sort of the same way or as a proxy or  
4    comparable roughly to the proportionate use.   Okay.  
5    So that if one, you know, talked about 50/50 traffic  
6    balance, you'd be saying, you know, You're sending  
7    the same amount of traffic I'm sending.   Okay.

8                   Now, it's become clear to me.   So I  
9    would change this in my testimony, in fact.   I would  
10   rewrite this to be more accurate.   It is -- it  
11   appears and it certainly -- it certainly appears  
12   correct to say that traffic balance for recip comp  
13   purposes and to decide, you know, about bill and keep  
14   and so forth, is not met one to one to the issue of  
15   overall, you know, total use and the two parties'  
16   proportionate use of the facilities.   Okay.   It might  
17   map one to one, but -- it would map one to one, I  
18   believe, the statements are correct, if every minute  
19   of traffic going over there were subject to -- you  
20   know, contingently subject to recip comp.   Okay.   But  
21   that's not necessarily the case.

22                   So I think it is a matter of absolute

1 volume of traffic transiting the joint-use facilities  
2 and then the proportionate use would break that, you  
3 know, volume of traffic down.

4 Q And you're aware that Sprint has stated  
5 that transit traffic for traffic that it originates  
6 and terminates through an AT&T customer should not  
7 be -- or actually the other way. AT&T originated,  
8 Sprint terminated, that that traffic should not be  
9 attributed to Sprint through --

10 A I'm aware of --

11 Q -- interconnection facility?

12 A Right. I'm aware of that position.

13 Q Okay. And you agreed that the parties in  
14 Kentucky, Sprint and AT&T, agreed to a 50/50 sharing  
15 of those interconnection facility costs?

16 A Yes.

17 Q And you're aware that there are either  
18 tariff rates or UNE rates for interconnection  
19 facilities in BellSouth states?

20 A Yes.

21 [!EZ SPEAKER 01]: Why don't we take a break  
22 and we can come back and finish up.

1 (Whereupon, a recess was taken.)

2 BY MR. SCHIFMAN:

3 Q Before we get to the documents I handed  
4 out, I just have a couple more questions on another  
5 topic.

6 We were talking about facility sharing  
7 on Page 15 of your direct testimony, Mr. Hoagg.

8 A Yes.

9 Q Okay. Compare your conditions for  
10 facilities sharing to the conditions for billing and  
11 keep in the paragraph above that.

12 A Okay.

13 Q Is there any reference in your testimony to  
14 an AT&T tariff for the way facilities are shared by  
15 two parties?

16 A There is no reference in my testimony to an  
17 AT&T tariff bearing on it cost sharing of joint-used  
18 facilities, none.

19 Q And in your view, it is technically  
20 feasible for parties to equally share joint-used  
21 facilities?

22 A You get to do it now, that's a pricing

1 matter. That's a pricing matter. It's technically  
2 feasible. It's a pricing matter.

3 Q Okay. Are you aware of the dispute AT&T  
4 and Sprint are having regarding whether or not  
5 transit traffic should be included in the calculation  
6 for the sharing of joint-used facilities?

7 A Yes, I'm aware of it. And that's another  
8 issue that I would hope that by the time briefs come,  
9 Staff weighs on in.

10 Q And would you agree with me, Mr. Hoagg,  
11 that if the parties agree to 50/50 sharing of an  
12 interconnection facility than the transit traffic  
13 issue does not need to be adjudicated or determined  
14 by the Commission, that that takes care of the  
15 problem?

16 A Is that sort of the form of a hypothetical,  
17 if AT&T in this case and Sprint agree to 50/50, then  
18 there'd be no need for the Commission to reach the  
19 issue of transit traffic?

20 Q Well, actually slightly different.

21 In the Kentucky ICA is it your  
22 understanding that the parties, Sprint and AT&T, have



1     agreed to jointly share on a 50/50 basis  
2     interconnection facilities?

3             A     That's my understanding.

4             Q     And is it your understanding then, because  
5     they have agreed to that 50/50 sharing, then the  
6     transit traffic issue does not need to be resolved by  
7     Sprint and AT&T in the Kentucky ICA?

8             A     I would agree with that if the Commission  
9     determines that the 50/50 sharing is appropriate.

10            Q     Okay. Let's step back just a little bit.

11                         I'm not talking about what the  
12     Commission should do here at this point, Mr. Hoagg.  
13     I'm just talking about in the context of the Kentucky  
14     ICA, which is the one that Sprint and AT&T have  
15     agreed to in the BellSouth area, that since the  
16     parties have agreed to a 50/50 sharing of  
17     interconnection facilities, then the parties don't  
18     need to come to grips with or resolve the issue of  
19     whether transit traffic should be included in any  
20     calculation of use of an interconnection facility?

21            MR. HARVEY: And just for clarification, that's  
22     in -- that issue wouldn't have to be determined in

1 the BellSouth area generically or...?

2 MR. SCHIFMAN: Yes, that's it. That's right.

3 THE WITNESS: Well, it's my understanding that  
4 AT&T is contesting -- quote unquote, contesting  
5 importation of that provision of the Kentucky  
6 agreement. If that understanding's correct -- well,  
7 I -- that's my understanding. It is also my position  
8 and would be my recommendation to the Commission,  
9 that the issue of pricing of joint-used facilities is  
10 an issue that the Commission needs to address under  
11 the state-specific pricing condition of Merger  
12 Commitment 7.1.

13 Therefore, it needs to examine that  
14 provision in the Kentucky agreement and see if it's  
15 appropriate for importation into Illinois. And  
16 that -- it's my understanding right now that that  
17 examination goes on in the context of it is not an  
18 agreed to position. It is petition -- or it is a  
19 situation that the parties disagree about.

20 BY MR. SCHIFMAN:

21 Q Okay. Just -- I understand your answer and  
22 to me it sounds like you're discussing in the context

1 of what the Commission could or could not do here in  
2 Illinois.

3 I guess what I'm asking you, I'm  
4 asking you to step back to -- pretend you're in  
5 Kentucky. Okay?

6 A Okay.

7 Q And pretend that -- and since -- and you  
8 agree with me that the parties in the Kentucky ICA  
9 agreed to share on a 50/50 basis joint-use  
10 interconnection facilities; right?

11 A That's my understanding.

12 Q And, so, is it your understanding also that  
13 since there was that 50/50 sharing agreed to by the  
14 parties in Kentucky, then the parties in Kentucky did  
15 not need to resolve the issue of whether transit  
16 traffic should be included in the calculation?

17 A That in the -- yes, in Kentucky and with  
18 respect to that Kentucky ICA, that's my  
19 understanding. I'm not 100 percent confident in all  
20 that understanding, but that's my understanding.

21 Q We had a little bit of discussion about  
22 intraMTA 1-plus dialed traffic. And, you know, we --

1     your attorney stated that he thought it was a legal  
2     argument, and I can accept that.

3                     Hypothetically, though, if intraMTA  
4     traffic that is 1-plus dialed would be included into  
5     the calculations of reciprocal compensation, is it  
6     your opinion that the 57/43 percent traffic balance  
7     would change that's in Mr. McPhee's exhibit?

8             MR. HARVEY:   No objection.   Go ahead.

9             THE WITNESS:   Yeah, it's my understanding and  
10    expectation -- I can't recall any numbers and I don't  
11    know that we have all specific -- all numbers in  
12    front of us -- it's my understanding and expectation  
13    that whether that traffic is included or excluded  
14    from the calculation, clearly results in the final --  
15    in the result -- clearly alters the resulting traffic  
16    split numbers.

17                    And it's my understanding inclusion of  
18    that traffic would bring the -- let's just -- if the  
19    current estimate that AT&T, for example, has on the  
20    table is 57/43, would bring the 57 down and the 43  
21    up.   By how much, I don't know.

22

1 BY MR. SCHIFMAN:

2 Q And so it's possible that the traffic,  
3 under that scenario, would be more roughly balanced  
4 than it is today; right?

5 A It is certainly -- that is certainly  
6 possible.

7 Q Okay. Did you read Mr. McPhee's testimony  
8 about AT&T not getting any benefit from transit  
9 traffic? It's on Page 36 of his direct testimony.

10 A Yeah, I did read that.

11 MR. HARVEY: This would be 36 of direct,  
12 Counsel?

13 MR. SCHIFMAN: Yes, sir.

14 BY MR. SCHIFMAN:

15 Q Is it your understanding that carriers pay  
16 AT&T for transit traffic that AT&T's tandem switches  
17 handle?

18 A That's my understanding.

19 Q Do you believe that AT&T is not recovering  
20 its costs for providing that service?

21 A I couldn't venture an opinion on that.

22 Q Okay. Are transit rates TELRIC based in

1 Illinois?

2 A They should be.

3 Q Okay. Do you know if AT&T's transit rates  
4 are TELRIC-based?

5 A I believe they are.

6 Q And they should be because they're subject  
7 to transits of 251(c), obligation in your view?

8 A Well, as a general matter -- I think the  
9 answer is "yes." As a general matter, TELRIC pricing  
10 is appropriate, you know, is a pricing policy both at  
11 the federal/state level for UNEs and interconnection  
12 elements -- interconnection facilities, et cetera.

13 Q Can you turn to McPhee rebuttal testimony,  
14 Page 23, Lines 477 through 480.

15 MR. HARVEY: 23, 477 through 480?

16 [!EZ SPEAKER 01]: Yes.

17 BY [!EZ SPEAKER 01]:

18 Q Well, the question that starts on Line 474  
19 that Mr. McPhee asked himself, Is AT&T Illinois  
20 required to provide transit service at TELRIC rates  
21 as Mr. Felton suggests? Do you see that?

22 A I do.

1           Q     And do you see his answer as saying that  
2     the short answer is that this Commission has ruled  
3     that AT&T Illinois is not required to provide transit  
4     service at TELRIC rates --

5           A     I see it.

6           Q     -- and that it is appropriate for AT&T  
7     Illinois to charge its tariffed rates for transit  
8     service. Do you see that?

9           A     Yes, I do.

10          Q     You disagree with that testimony; right?

11          A     You know, I'm having difficulty testifying  
12     on this. In fact, I'm not sure that I do disagree  
13     with that testimony. I'd have to go back and look at  
14     the relevant Commission decisions. Without doing so,  
15     I am not a reliable source of information about this.

16          Q     Okay. We'll move on.

17                     Okay. I'm going to refer to the  
18     exhibits that I gave to you at the break, Mr. Hoagg.

19           MR. HARVEY: Are you marking these, Counsel, as  
20     like kind of a group exhibit or...?

21           MR. SCHIFMAN: Actually, we're going to do it  
22     serially, if you don't mind, because that's how I

1 presented it to the court reporter.

2 MR. HARVEY: Fair enough.

3 MR. SCHIFMAN: And so on the record let's talk  
4 about them for a second then, Mr. Harvey, you and I  
5 off the record can discuss admissibility issues.

6 MR. HARVEY: Fair enough.

7 (Whereupon, Sprint Cross-Exhibit  
8 Nos. 5-10 were marked for  
9 identification.)

10 BY [!EZ SPEAKER 01]:

11 Q What I've put before you, Mr. Hoagg, the  
12 first one is Sprint Cross-Exhibit 5. It's the joint  
13 petition of Verizon North, Inc., Verizon South, Inc.,  
14 and KMC Telecom, Roman numeral 5, comma, Inc.,  
15 regarding the adoption of an interconnection  
16 agreement?

17 A I have it.

18 Q Okay. And the second one is identified as  
19 Sprint Cross-Exhibit 6, and it's a letter dated  
20 August 23, 2002, to Mr. Michael Duke and the "Re"  
21 line is, Requested adoption under the FCC merger  
22 conditions, and it's on Verizon letterhead. Do you



1     have that?

2             A     Have it.

3             Q     And the next one's marked Sprint

4     Cross-Exhibit 7.  It's Appendix 1, 251, 252 agreement

5     between some Verizon companies and Sprint

6     Communications Company, L.P., for the state of

7     California.

8             A     Got it.

9             Q     And the next one --

10            MR. HARVEY:  Just to make sure I'm getting this

11     right.  This is marked Appendix 1 in the upper

12     right-hand corner --

13            MR. SCHIFMAN:  Yes.

14            MR. HARVEY:  Okay.  Thank you.

15     BY [!EZ SPEAKER 01]:

16            Q     And the next one is identified as Sprint

17     Cross-Exhibit 8, and it's a statement from an

18     Illinois Staff person -- verified statement of A --

19            THE WITNESS:  Olusanjo Omoniyi, and I will

20     spell that for the court reporter.  A, is the

21     initial.  Olusanjo is spelled O-l-u-s-a-n-j-o.  And

22     Omoniyi is spelled O-m-o-n-y- -- n-i-y-i; again,

1 O-m-o-n-i-y-i.

2 MR. SCHIFMAN: Thank you, Mr. Harvey. That was  
3 of great assistance. I appreciate that.

4 BY [!EZ SPEAKER 01]:

5 Q Do you have that in front of you?

6 A Yes.

7 Q And the next one is marked Sprint  
8 Cross-Exhibit 9. It's a memorandum from  
9 Administrative Law Judge Glennon P. Dolan, dated  
10 January 27, comma, 2005.

11 A I have it.

12 Q Okay. And the final one is Sprint  
13 Exhibit 10, it's been marked, and it's a Commission  
14 order in Docket 04-0713. Do you have that?

15 A I have that.

16 [!EZ SPEAKER 01]: Okay. Can we go off the  
17 record now.

18 (Whereupon, a discussion was had  
19 off the record.)

20 MR. SCHIFMAN: We've identified the  
21 cross-exhibits -- Sprint Cross-Exhibits 5 through 10.

22 Mr. Hoagg, you've said you've seen

1     these.  We had a conversation off the record.  And I  
2     believe Mr. Harvey has a statement regarding Staff's  
3     position on the admissibility of these  
4     cross-exhibits.

5             MR. HARVEY:  Staff will -- Staff understands  
6     Mr. Schiffman to have taken these or to have directed  
7     somebody else to take these documents from the  
8     Commission's e-Docket system.  As such, Staff accepts  
9     their authenticity as, you know -- and does not  
10    object to their admission.

11            Staff does, however, just for form's  
12    sake, you know, note for the record that the Staff  
13    witness in this proceeding was A. Olusanjo Omoniyi  
14    and not, in fact, Mr. Hoagg.  And we'll, I guess,  
15    object to certain lines of cross-examination  
16    regarding these documents depending on what the  
17    questions are.

18            JUDGE DOLAN:  Subject to that --

19            MR. FRIEDMAN:  And AT&T has no objection having  
20    to do with authenticity and is with Mr. Harvey on  
21    that.

22                   And we won't object to admissibility

1     subject to the reservation of right to move to strike  
2     if it turns out it's irrelevant.

3             JUDGE DOLAN:   Subject to that, then Sprint's  
4     Cross-Examination Exhibits 5, 6, 7, 8, 9 and 10 will  
5     be admitted into the record.

6                             (Whereupon, Sprint's  
7                             Cross-Exhibit Nos. 5-10 were  
8                             admitted into evidence.)

9     BY MR. SCHIFMAN:

10            Q     Mr. Hoagg, while we've been chatting about  
11     this, have you had a chance to look at the  
12     Cross-Exhibit 5, it's the petition for the adoption  
13     of an interconnection agreement?

14            A     Yes, I had a chance at least just to skim  
15     it.

16            Q     And do you see in Paragraph 3 it talks  
17     about some Bell Atlantic and GTE merger conditions?

18            A     Yes, I see.

19            Q     Okay.   And Illinois had a case regarding  
20     Bell Atlantic/GTE merger approval, did it not?

21            A     Yes, we did.

22            Q     Okay.   I think I was there, and I think you

1     were there, too.

2                     And did you understand that Bell  
3     Atlantic and GTE made some merger conditions  
4     regarding the porting of interconnection agreements  
5     from one state to another?

6             A     Yeah, I can't recall, and I'm not right now  
7     aware of the specifics; but, generally, yes.

8             Q     Okay. Let's move to the Cross-Exhibit 6,  
9     that's the letter from Verizon. Do you have that?

10            A     Yes.

11            Q     Then go to Page 4 of that document, please,  
12     Paragraph 5.

13            A     Got it.

14            Q     And it looks like Verizon is making some  
15     statements regarding the adoption process here. And  
16     it talks about KMC's adoption of the Verizon  
17     California terms pursuant to the merger conditions as  
18     subject to all the provisions of such merger  
19     conditions. Please note that the merger conditions  
20     exclude the following provisions from the interstate  
21     adoption requirements. Then it goes into, State  
22     specific pricing, state-specific performance

1 measures, provisions that incorporate a determination  
2 reached in an arbitration conducted in the relevant  
3 state under the federal statute. Do you see that?

4 A Yes.

5 Q Those are -- at least on first blush, those  
6 are some merger conditions that are the same or  
7 similar to the merger conditions from the AT&T and  
8 BellSouth merger; right?

9 A It certainly appears. And, again, I don't  
10 recall the specifics. It certainly appears they are  
11 to some extent congruent.

12 Q And, in fact, that phrase "state-specific  
13 pricing" is listed in this letter from Verizon;  
14 right?

15 A Correct.

16 Q Okay. And that's the same phrase that's in  
17 Merger Commitment 7.1 in the AT&T BellSouth merger  
18 commitment?

19 A If it's not identical, it's awfully close.

20 Q And then you go down to Letter B and it  
21 looks like -- and I'm not going to ask you to read  
22 this out loud. But take a look at that one and tell

1 me if that looks like that's pretty similar to some  
2 of the terms of Merger Commitment 7.1.

3 A Yes, that does look to be quite similar to  
4 the terms that I -- I, for my own purposes, think of  
5 as sort of general feasibility condition or a  
6 conditions requirements.

7 Q Okay. And then let's move to the  
8 Cross-Exhibit 7. That is the agreement which was  
9 attached as Appendix 1. And it looks like that's a  
10 Sprint agreement and a Verizon California agreement;  
11 right?

12 A Yes, it certainly looks that way.

13 Q Okay. And would you recognize this as, you  
14 know, based on what we've talked about so far as the  
15 agreement that KMC wished to have ported into  
16 Illinois?

17 A Yes, it certainly appears this is the  
18 agreement that that was the subject of, you know,  
19 what became this docket.

20 Q Okay. And can you turn to what's labeled  
21 on the bottom of Page 56 of that agreement.

22 A Got it.

1           Q     And at the bottom there -- well, 5.4 is a  
2     provision that says, Compensation for Exchange of  
3     traffic. Do you see that?

4           A     Right, I do.

5           Q     And then 5.4.3 is labeled, Bill and Keep;  
6     right.

7           A     On there.

8           Q     Do you agree -- take a look and read that  
9     provision 5.4.3, please.

10          A     Got it.

11          Q     Do you agree with me that this is a bill  
12     and keep provision that whereby the parties agree to  
13     bill each other and -- well, excuse me --

14           MR. HARVEY: To bill and keep, perhaps?

15          BY MR. SCHIFMAN:

16          Q     It's a bill and keep provision in this  
17     interconnection agreement?

18          A     I agree it's a -- on its face it's a bill  
19     and keep provision.

20          Q     And it defines in this provision roughly  
21     balanced as being a 60/40 split; is that right?

22          A     Well, yes, I guess, they do -- just one



1 second. I think that's an accurate characterization.  
2 A 60/40 split, that's the outer bounds of what these  
3 parties agree -- yeah, it appears to be the outer  
4 bound of what these parties agree would be considered  
5 roughly balanced for -- roughly balanced for bill and  
6 keep.

7 MR. FRIEDMAN: Judge Dolan, I'm going to kind  
8 of do a little -- my blatant attempt at Matt Harvey,  
9 which I -- my next line, which is, I may as well make  
10 my doomed objection now as later.

11 The objection, of course, is  
12 relevance. And the reason I'm making it now rather  
13 than wait until the end to strike all this is that if  
14 this objection should be sustained, it will take us a  
15 few minutes. I believe -- I assume that where we're  
16 headed is that Verizon's nonopposition a few years  
17 ago, okay, to the porting of a bill and keep  
18 provision pursuant to a merger commitment like the  
19 one we're dealing with here somehow is probative of  
20 the fact that this isn't really state-specific  
21 pricing. I assume that's where we're headed -- and  
22 of Staff's blessing of it somehow is corroborative of

1     that position.

2                     This is, of course, irrelevant because  
3     what Verizon may have chosen to do by way of opposing  
4     or not opposing something has zero bearing on the  
5     question whether it is, in fact, state-specific  
6     pricing or whether an objection, if made, would have  
7     been sustained. Nor does Staff's determination that  
8     the port was not inconsistent with the public  
9     interest or discriminatory have any probative value  
10    in this case.

11                    So that would be the basis for the  
12    objection, and I move to strike all these documents.  
13    And I eagerly await the overruling of my objection,  
14    if that's what's to come.

15           MR. SCHIFMAN: Well, you know, quickly, your  
16    Honor, I agree with Dennis that it should be  
17    overruled.

18           MR. FRIEDMAN: I didn't say it should be. I  
19    just said it would be.

20           MR. SCHIFMAN: And really, basically, we're  
21    dealing with similar provisions here from the merger  
22    commitment. Does it mean the Commission has to rule

1 in the exact same mirror? No, of course, the  
2 Commission's going to weigh -- there's evidence  
3 involved and the Commission's going to weigh  
4 evidence. But it certainly has probative value in  
5 terms of how the Commission previously has looked at  
6 something like state-specific pricing and bill and  
7 keep provisions.

8                   You know, we -- evidence was  
9 introduced yesterday regarding a 55/45 split for bill  
10 and keep that Sprint had signed up to. And, you  
11 know, this is evidence of even a California agreement  
12 that Sprint signed up to 60/40. And guess what, it's  
13 been ported here to Illinois, you know, according to  
14 a merger commitment that another ILEC made,  
15 admittedly. But, nonetheless, it is probative to --  
16 and the Commission should this into the account when  
17 making its decisions in the case.

18           MR. FRIEDMAN: And a very short rebuttal before  
19 Mr. Harvey weighs in is that -- I'm not saying it's a  
20 little bit probative and -- but not much. I'm saying  
21 it has no probative value whatsoever. Neither  
22 Verizon's election not to take the stand that AT&T's

1     taken here for whatever reasons it may have had,  
2     that's not probative of anything.  And since Verizon  
3     didn't oppose this, the fact that the Commission  
4     blessed it in an uncontested proceeding, means zip.  
5     So...

6             MR. HARVEY:  I mean, I guess to the extent my  
7     views are in any way solicited here, I agree with  
8     Mr. Friedman's characterization of the document  
9     itself.  I mean, it's clearly -- one of the major  
10    differences here is the fact that, you know, Verizon  
11    said, Yeah, okay, no problem, do this, we agree.  I  
12    think that there is some scintilla of probativeness,  
13    if you'll excuse me, you know -- I mean, just being  
14    the devil's advocate here.  And I guess there's  
15    really -- I mean, there's no -- we might as well just  
16    at this late date leave it in and go with the flow.

17            JUDGE DOLAN:  Yeah, at this point let's just  
18    overrule the objection.  And, please, move on.

19            [!EZ SPEAKER 01]:  Okay.

20                    I'm sorry, Madam Court Reporter, what  
21    was the question I asked before Mr. Friedman's  
22    objection?

1 (Whereupon, the record was read  
2 as requested.)  
3 BY [!EZ SPEAKER 01]:  
4 Q And, quickly, Mr. Hoagg, let's just look at  
5 the bottom of Page 58. It talks about compensation  
6 for internetwork facilities and there's a section  
7 about mid-span fiber meet. Do you see that?  
8 A Yes.  
9 Q And then on 59 it talks about -- it says,  
10 DS1 facility charges will be reduced to reflect the  
11 proportionate share in the facility. Do you see  
12 that?  
13 A Yes.  
14 Q And then it identifies the initial  
15 proportionate share as set forth in Appendix A. Do  
16 you see that?  
17 A Yes.  
18 Q Okay. And then turn, please, quickly for  
19 me to Appendix A which is --  
20 MR. HARVEY: Starts on Page 61 as marked.  
21 BY [!EZ SPEAKER 01]:  
22 Q And then at the bottom it talks about

1     initial factors and it says, Additional proportionate  
2     share factor is 50 percent. Do you see that?

3             A     I see that.

4             Q     So this is -- what Sprint is proposing here  
5     in this case is a proportionate share factor of  
6     50 percent; right? In this case meaning the 07-0629  
7     docket.

8             A     That's my understanding of Sprint's  
9     proposal.

10            Q     Okay. And then quickly let's go to  
11    Cross-Exhibit 8, the verified statement of  
12    Mr. Omoniyi.

13            A     Got it.

14            Q     And you see on Page 2 at the bottom how it  
15    talks about Mr. Omoniyi reviewed the agreement for  
16    consistency with the requirements of Illinois law,  
17    basically?

18            A     Yes, I see that.

19            Q     Okay. Is there anything -- have you had a  
20    chance to look at this document while we've been --

21            A     I did look at it previously. And I got  
22    the -- yes, I got the gist of it. And I got, you

1 know, what I thought was the significance of this  
2 document.

3 Q So Mr. Omoniyi, the gist of it is that he  
4 recommended approval of this agreement saying it was  
5 not inconsistent with Illinois law; is that correct,  
6 as one of the items that --

7 A That's one of the items, but I would in the  
8 same breath add that he emphasized -- and I think it  
9 will show up in the Commission order -- that the  
10 Commission could only reject this agreement if it  
11 finds that it was discriminatory, using that word  
12 loosely, and that it was not consistent with the  
13 public interest, convenience and necessity. He also  
14 underscores that. I mean, that looms large in his  
15 testimony, in my view.

16 Q Okay. And then next Exhibit Sprint  
17 Cross-Exhibit 9 is a memo from Judge Dolan to the  
18 Commission recommending that the Commission approve  
19 the negotiated interconnection agreement; correct?

20 A Yes.

21 Q And, usually, in doing so the ALJs look at  
22 the testimony that Staff provides on a negotiated

1 interconnection agreement case?

2 A I hope so.

3 Q Let's go on. And then Exhibit 10 is the  
4 Commission order in this case, 04-0713; is that  
5 right?

6 A That's correct.

7 Q Okay. And we don't need to go through it  
8 all. But in substance, the Commission approved KMC's  
9 adoption of that Verizon agreement -- approved the  
10 adoption of KMC of a Verizon and Sprint agreement  
11 from California pursuant to the merger conditions  
12 that Verizon entered into; is that right?

13 A That's -- without looking at it more  
14 closely, that's at least my understanding of this  
15 order.

16 Q Okay. And so -- and then we look at what  
17 the agreement containing it -- contained a bill and  
18 keep provision with a 60/40 split; is that right?

19 A A bill and keep with a -- that's right --  
20 with an outer bound maximum party's intent was  
21 maximum traffic in balance up to 60/40, and then  
22 beyond that that was -- you know, beyond that was



1 going to be considered by those two parties out of  
2 bounds for roughly balanced.

3 Q And it approved the agreement that  
4 contained a sharing facilities factor of .50;  
5 correct?

6 A Yes.

7 Q Okay. We're almost done here.

8 I was going to ask you some questions  
9 about other provisions of the agreement whether Staff  
10 took positions on it other than the bill and keep and  
11 the facilities sharing. And I think we established  
12 earlier that you today are not going to testify on  
13 other provisions of the agreement as to whether or  
14 not they may be ported; is that right?

15 A That's correct. I think it's accurate to  
16 say that we are -- we are examining all the  
17 evidence -- you know, we're examining the record as  
18 it's being developed and we're, you know, thinking  
19 about those issues. And, again, I would hope that  
20 Staff -- it's my expectation that Staff will address  
21 issues beyond those addressed in my testimony in  
22 brief.

1           Q     Okay. And this is not critical, but I just  
2     want to establish this record, would you agree with  
3     me then that Sprint would not have the ability to  
4     inquire of Staff's position on the record if you --  
5     if Staff makes more recommendations than what is  
6     considered or contained in its testimony?

7           MR. HARVEY: I think we'll agree that that  
8     would be impossible to do.

9           THE WITNESS: I would agree with that if it's  
10    correct -- if it's correct that if Staff were to do  
11    so in initial briefs that any Sprint response to that  
12    in reply briefs would not be considered on the  
13    record.

14    BY MR. SCHIFMAN:

15           Q     Okay. Let's go to Page 5 of your rebuttal  
16    testimony. On Page 4, there's a question that you  
17    ask yourself about Mr. McPhee and Mr. McPhee's  
18    testimony.

19           A     Got it.

20           MR. HARVEY: Is this beginning at Line 60,  
21    Counsel?

22           MR. SCHIFMAN: Yes.

1 BY MR. SCHIFMAN:

2 Q And then let's skip down to Line 82 on  
3 Page 4.

4 A Okay.

5 Q And then you present something basically  
6 discussing transaction cost savings from bill and  
7 keep?

8 A Correct.

9 Q Okay. Is there anything in Merger  
10 Commitment 7.1 that says -- that discusses  
11 transaction cost savings and how that relates to the  
12 porting of bill and keep arrangements?

13 A No. No, as I -- no, there's not.  
14 Certainly nothing in black and white. As I -- in  
15 response to an earlier question, just for  
16 clarification, my own opinion and recommendation  
17 about proper application of the state-specific  
18 pricing condition would involve the Commission  
19 considering issues of traffic balance in this  
20 particular case.

21 Q Okay. And you agreed with me earlier that  
22 there are other considerations for parties agreeing

1 to that bill and keep arrangement in addition to  
2 transaction costs?

3 A Yes. For example -- well, yes, there are a  
4 number of those. You know, some of those have been  
5 discussed. Absolute magnitude of the traffic being  
6 exchanged, for example.

7 Q Okay. And do you consider transaction  
8 costs a proceeding like we're in today? You use the  
9 phrase "transaction cost" in your testimony on Lines  
10 82 and 83. And I'm wondering if a proceeding that  
11 we're in here today, is that considered a transaction  
12 cost for purposes of your testimony?

13 A Not for purposes of my testimony. I use  
14 the term "transaction costs" and specifically -- and  
15 reserve that term for the costs, you know, associated  
16 directly with accounting for measuring, billing, et  
17 cetera, et cetera, the traffic itself. I did not --  
18 the definition -- as I define the word "transactions  
19 costs," it wasn't expansive, and it isn't expansive  
20 enough to include all your guys' salaries.

21 Q Okay. On Line 87 you reference  
22 traffic would not and should not be considered

1 approximately balanced. And you put "approximately"  
2 in quotes. Do you see that?

3 A Yes.

4 Q Approximately balanced is not a condition  
5 in any FCC rule or in the merger commitment, is it  
6 not?

7 A No, it is not.

8 Q Okay. That's a term that you're using? Is  
9 that a different -- does that have a different  
10 meaning than "roughly balanced"?

11 A Who's to say?

12 Q Well, I'm asking you.

13 A I guess -- yeah, I guess for purposes of  
14 this testimony the two are roughly interchangeable.

15 MR. FRIEDMAN: Are they approximately  
16 interchangeable?

17 THE WITNESS: Yes. I apologize. They are -- I  
18 guess I'm using those terms interchangeably.

19 BY MR. SCHIFMAN:

20 Q Okay. And that would be the same of your  
21 use of the word "approximately" on Line 90?

22 A Yes.

1           Q     Given the discussion that we've had here  
2     today and your acknowledgment of how intraMTA traffic  
3     may play into the balance of traffic between the two  
4     parties, are you aware of some evidence now that  
5     would indicate that the traffic could be more roughly  
6     balanced?

7           MR. HARVEY:   Or less unbalanced, perhaps?   I  
8     mean --

9     BY [!EZ SPEAKER 01]:

10          Q     Or less unbalanced, that would be a good  
11     way to phrase it.

12          A     Let me make a stab at that.   There's a  
13     lot -- I wrote this testimony on April 4th 2008.  
14     Since that date there are a lot of -- a lot of  
15     additional testimony came in on that date that as of  
16     the time I wrote this testimony I had not seen.   A  
17     lot of additional information has flowed into this  
18     record.

19                       There are -- it's certainly -- in my  
20     view, right now there are significant pieces of  
21     testimony that bear on the question of whether, in my  
22     view, this traffic is roughly balanced, whatever

1     precisely that term means. And all that -- that  
2     evidence bears careful examination.

3             Q     Okay. Also, Mr. Hoagg, evidence has come  
4     in really contemporaneously with you filing your  
5     rebuttal testimony --

6             A     Yes.

7             Q     -- was Sprint's rebuttal testimony, too;  
8     right?

9             A     That's what I meant to say by saying it --  
10    there was a bunch of testimony filed that was -- was  
11    quite a bit of additional information filed the same  
12    day I filed this. Which if I had had even a couple  
13    of days to look at that, my testimony might have been  
14    a little different.

15            Q     Okay. And Sprint presented some testimony  
16    regarding whether or not balance of traffic was even  
17    a consideration by AT&T and BellSouth when they first  
18    entered into that Kentucky ICA, did it not?

19            A     Yes, but remember, my position on that is  
20    that's irrelevant. But...

21            Q     Well, I thought your position on that,  
22    Mr. Hoagg, is that is relevant because that's one of

1     your conditions that approximate traffic balance was  
2     not a condition for imposition of bill and keep.  
3     That's Letter B on Lines 367 through 369 of your  
4     direct testimony.

5           A     I think maybe we're having some confusion  
6     here.  Could you do -- could you humor me and let's  
7     track back through this.

8           Q     Okay.  Sure.  Sure.

9           A     Because I think we are confused.  I think  
10    I'm confused.

11          Q     Letter B in your direct testimony basically  
12    said that in order for Sprint to port the --

13               [!EZ SPEAKER 05]:  And forgive me, Counsel.

14    Just so I'm clear, Letter B is -- when we refer to  
15    Letter B we're referring to Line 367 of his direct  
16    testimony?

17               [!EZ SPEAKER 01]:  Yes.

18               [!EZ SPEAKER 05]:  Okay.

19    BY [!EZ SPEAKER 01]:

20          Q     Okay.  Let's backtrack just a little bit.

21                       In your direct testimony you say --

22    you ask yourself the question, What would Sprint need



1 to show in order to prevail on the reciprocal  
2 compensation pricing issues in this proceeding? You  
3 ask yourself that question; right?

4 A Correct.

5 Q And then you say, Sprint needs to show  
6 either -- and you give two choices; right?

7 A A and B. Correct.

8 Q A and B. And B starts on Line 367; right?

9 A Correct.

10 Q And there you say, In Illinois if one party  
11 to a local traffic exchange objects to bill and keep  
12 reciprocal compensation pricing approximate traffic  
13 balance is not a condition for an imposition of bill  
14 and keep over such objection.

15 Now, I guess my question is: Do you  
16 agree with me that Sprint presented evidence that --  
17 and I don't -- necessarily asking you if you agree  
18 with it or don't agree with the Sprint evidence, but  
19 do you believe that Sprint presented evidence that  
20 approximate traffic balance was not a consideration  
21 in the entrance into the original Kentucky ICA?

22 MR. FRIEDMAN: Let me make an objection, if I

1     could, because I have some interest in maintaining  
2     the clarity of the record.

3                     And the objection is that there is --  
4     the question is complex in a way that may tend to  
5     confuse because of the complete disconnect between  
6     the premise in Section B, which talks about  
7     requirements in Illinois and the question having to  
8     do with what was going on in Kentucky in 2001.

9             MR. SCHIFMAN:   I guess one response would be  
10    that the witness is Mr. Harvey's witness and  
11    Mr. Friedman shouldn't be permitted to make  
12    objections in that manner.

13                    And I guess the other response is, is  
14    that Mr. Hoagg wrote testimony back in March of this  
15    year.   And he gives two conditions that he thinks  
16    need to be staffed by Sprint in order for the bill  
17    and keep agreement to be ported to Illinois, and I'm  
18    trying to determine what he means by those conditions  
19    and if he believes that evidence has been presented  
20    on the issues that he lists in those conditions.

21             JUDGE DOLAN:   Subject to that, I'll overrule  
22    the objection.   If the witness can answer...

1           THE WITNESS:  Let me make a stab at it.  I  
2   continue to believe that you've got to show one or  
3   both of these.  I agree that evidence has been  
4   presented by Sprint -- let me back up.  It was my  
5   opinion at the time that I wrote this testimony that  
6   you had not -- that given the state of the record  
7   there you had not demonstrated either one of those as  
8   of that date.  Since that date, Sprint has -- well,  
9   Sprint -- both Sprint and I believe AT&T have  
10  submitted evidence that would bear on both of those  
11  questions.  Okay.

12                   And here's the part you'll probably  
13  want to strike:  I believe that the evidence that  
14  you've submitted with respect to the first condition  
15  is -- bears very careful examination to this point in  
16  looking at the evidence that you've presented.  With  
17  respect to the second condition, my own opinion is  
18  it's not persuasive, but that's just my own opinion  
19  at this point.

20  BY MR. SCHIFMAN:

21           Q     Okay.  Quickly, Mr. Hoagg, you're rebuttal  
22  testimony I don't believe contains any additional

1 statements regarding the facility sharing issue; am I  
2 right about that?

3 A Correct. It doesn't say anything  
4 additional. It doesn't -- it's just repetitive in  
5 that respect.

6 Q Okay. And so you continue to -- your  
7 opinions on the facility sharing issue are, as you  
8 stated in your direct testimony and as we've talked  
9 about it here today; right? That issue here today?

10 A Well, if you bear with me and see if this  
11 is helpful, I think I would repeat on the facility  
12 share -- the cost-sharing of the joint facilities, I  
13 would repeat what I just said with respect to bill  
14 and keep. Since the time I -- since the time I  
15 submitted that, Sprint at least, if not AT&T -- I'd  
16 have to think about that -- but Sprint at least has  
17 submitted evidence that I'm quite sure would bear on  
18 both Condition A and B.

19 And it is certainly my intention -- I  
20 mean, I've been trying to think through the evidence.  
21 I've been trying to sort through the evidence  
22 presented on this. But it's certainly my intention

1 to continue to sort through it. I think there's  
2 evidence that, again, bear examination.

3 MR. SCHIFMAN: I have no further questions for  
4 Mr. Hoagg at this time.

5 JUDGE DOLAN: Thank you.

6 MR. FRIEDMAN: I do have some. I would  
7 guess -- I would guess something like 15 minutes.  
8 Could we take a couple of minutes first or no?

9 (Whereupon, a discussion was had  
10 off the record.)

11 CROSS-EXAMINATION

12 BY

13 MR. FRIEDMAN:

14 Q We'll dispense with the formalities, shall  
15 we, Mr. Hoagg?

16 A I hope so.

17 Q Do you remember when Mr. Schiffman asked you  
18 questions on the subject of the feasibility part, not  
19 the technical feasibility part, but the feasibility  
20 of language in the merger commitment relating only to  
21 interconnection arrangements and UNES? Do you  
22 remember that subject matter?

1           A     I remember that, right.

2           Q     And, as I recall, you recognized only in  
3     the moment that that feasibility language appeared to  
4     be tied only to interconnection arrangements and  
5     UNEs? I'm just getting you back in the swing of  
6     things.

7           A     Sure. I mean, I guess what I would say at  
8     this point is that it's clear to me that the  
9     state-specific pricing, the performance plans and  
10    technical feasibility, are general, the cost of board  
11    conditions. It's clear to me -- it's clear to me at  
12    least, that the -- consistent with the laws and  
13    regulatory requirements of, in this case, the State  
14    of Illinois are general issues of, you know, an  
15    umbrella sort of a condition. The only possible  
16    condition that's -- or set of condition -- or  
17    conditions that's somehow limited is that that -- the  
18    one sentence in response to -- in cross-examination I  
19    said -- I believe I said, Yeah, it looked like that.  
20    It appeared -- I never looked at it before, though.  
21    It appeared it might be -- could be limited. I can't  
22    recall exactly what I said -- could be, might be

1       limited to interconnection arrangement or UNE.

2           Q       Several questions I'm going to ask you may  
3       push you beyond things that you've formed an opinion  
4       on. Obviously, you're welcome to say that you  
5       haven't formed an opinion. And this is the first of  
6       them, and I'll give you a hypothetical.

7                       Let's imagine hypothetically that in  
8       the Kentucky ICA that Sprint wants to port, there is  
9       in the resale attachment -- and I underscore  
10      resale -- some provision. Okay. And we're not going  
11      to worry about what the provision says, but there's  
12      some provision that allows Sprint to do something or  
13      to get something. And assume further that in  
14      Illinois the OSS -- the AT&T Illinois OSS cannot  
15      accommodate that thing, whatever it might be. So if  
16      you try to do it, it's resale, you try to place the  
17      order, you just can't. Okay. So I'm trying to make  
18      concrete what we've been talking a little bit --

19           A       Right.

20           Q       -- we talk about theoretically.

21           A       I understand.

22           Q       Do you have a view as to the portability of

1     that hypothetical resale provision in the Kentucky  
2     agreement?

3             A     Yeah, given the hypothetical you posed  
4     there, yeah, my view at this point -- my view would  
5     be, look, that becomes a real-life question and, in  
6     fact, actually, my view now is that that then takes  
7     us directly to the issue of -- you said there was  
8     some problem. It takes us directly to the issue of  
9     proper application of the word "feasible to provide."

10                    So under your hypothetical, if you've  
11     got, you know, some resale provision that there's a  
12     real -- that was not a problem to do in Kentucky, but  
13     there's some kind of real problem to do in Illinois,  
14     okay, so that AT&T says it's not feasible to do that,  
15     then as long as the Commission -- then I would say  
16     that's a real issue and the Commission has to apply  
17     the feasibility test. For example, you know, maybe  
18     it's going to cost 50 million dollars and then it  
19     will be fine. Okay. Is that feasible?

20                    That's what I mean by -- what I think  
21     of those conditions as a more general feasibility set  
22     of conditions. Technical feasibility means -- almost



1 means like you've hit a brick wall. These other  
2 conditions, there may be some room for maneuver.

3 So I take your point. Given that  
4 hypothetical, I would not eliminate resale from that  
5 list.

6 Q Changing subjects, you identified in the  
7 conversation with Mr. Schiffman -- I think you used  
8 the word "transaction costs," maybe administrative  
9 costs but potentially administrative savings as  
10 something that -- one of a number of considerations  
11 that you would advise the Commission to take into  
12 account in making a determination whether traffic is  
13 roughly balanced; right?

14 A Correct.

15 Q You're not aware, are you, of any  
16 quantification in the record in this case of  
17 administrative or transaction costs that might be  
18 saved by using bill and keep as opposed to recip  
19 comp, are you?

20 A No, the only thing that comes to mind right  
21 here right now is that Sprint asked you a question or  
22 questions via DR going directly to that issue. And

1 my recollection is that AT&T in response to that DR  
2 essentially said it really didn't have that  
3 information in a form that could be pulled together,  
4 or something similar, that that information was not  
5 available or was not -- did not have that  
6 information.

7 Q Have you given thought that has reached a  
8 point that you're prepared to share today to the  
9 question of how the Commission would or should take  
10 into account this factor that we're talking about,  
11 administrative or transactions costs, that are not  
12 quantified?

13 A No, because I sort of had hoped that they  
14 would be quantified. I have a vague understanding  
15 that Sprint may have had a motion to compel -- I  
16 mean, had a motion to compel response to DRs. And I  
17 guess I was hoping thinking that that might be one of  
18 them.

19 If, in fact, there's no way that that  
20 information is in the record, I think that that is  
21 then -- I think that's unfortunate. And I think that  
22 it may be that -- I haven't thought about what the

1 Commission could or should, if I had any  
2 recommendation -- anything to say about it, what I  
3 would think they should do.

4 I think that -- I mean, I think that's  
5 a lack of the record, a hole in the record if we  
6 don't have that.

7 Q I think when you were talking with  
8 Mr. Schiffman about the various considerations that  
9 should be brought to bear under the determination  
10 whether traffic is roughly in balance, I think you  
11 used the phrase "absolute magnitude of traffic"?

12 A Right.

13 Q Can you elaborate.

14 A Well, at least one witness had said  
15 essentially, you know, has expressed this idea that,  
16 look, if you're talking -- and part -- and to some  
17 extent -- I'm not sure how large an extent -- this  
18 dovetails and is -- this dovetails with and is  
19 associated with the transactions causation.

20 If you are exchanging -- and I'll take  
21 two carriers exchanging small volumes of traffic --  
22 small volumes of traffic, let's assume symmetrical

1 recip comp rates. Small volumes of traffic means  
2 that relatively small amounts of compensation are  
3 going to move back and fourth. Under that  
4 circumstance it's -- you know, depending upon, again,  
5 the absolute magnitude, under that circumstance, the  
6 avoided costs could swamp the amount of  
7 compensation -- the net compensation flowing between  
8 the two carriers.

9                   So one carrier -- if the traffic's --  
10 we'll assume the traffic's, you know, significantly  
11 out of balance. Even though it's significantly out  
12 of balance, if the absolute magnitude of the traffic  
13 is low, the party that is due net compensation, it's  
14 not going to be much money. And that party might  
15 look at that and say, Well, I can -- you know, he's  
16 going to -- the other party's going to owe me \$100 a  
17 year, you know, in net compensation; but, Gee, I can  
18 save a \$150 a year in transactions costs, so why  
19 bother? I mean, that's obvious. I mean, that seems  
20 pretty obvious.

21                   You know, if we're talking vast  
22 quantities of traffic, then just, you know, it seems

1     fairly -- fairly clear that under those circumstances  
2     the transactions costs are going to loom relatively  
3     small in comparison to -- under this hypothetical,  
4     traffic, again, is pretty -- is significantly  
5     imbalanced. One of the -- one of the symmetrical  
6     rates, one of the parties is going to be due a fair  
7     chunk of change and is going to want it.

8                     Now, you know -- and the same thing  
9     within some of the agreements that the Commission has  
10    approved not -- also, you know, another factor that  
11    they look at is, Gee, you know, what seems to be the  
12    trend in the traffic? You know, I mean, is there an  
13    identifiable trend? Is the traffic growing in  
14    absolute volume? Is the traffic split? Appearing to  
15    move in one direction or another? So there's just a  
16    number of factors.

17                    MR. FRIEDMAN: Thank you. That's all the  
18    questions I have.

19                    JUDGE DOLAN: Any redirect?

20                    MR. HARVEY: If I might stick my head together  
21    with, counsel.

22                             You know what, no redirect.

1 JUDGE DOLAN: Thank you.

2 MR. SCHIFMAN: I don't have anything further.

3 JUDGE DOLAN: All right. Good.

4 Then you're done, Mr. Hoagg. Thank

5 you.

6 Then I believe the only other thing we

7 need to talk about is getting the schedule into the

8 record.

9 MR. RASHES: Yes, your Honor.

10 Your Honor, to the extent of the

11 following schedule, which all the parties discussed

12 earlier this afternoon and I'm about to read into the

13 record, to the extent provided in that schedule

14 Sprint would waive it's -- the statutory schedule

15 deadline in Section 13-515(d) of the Illinois Public

16 Utilities Act.

17 Under this schedule, initial briefs

18 would be due on Friday, May 16th, 2008.

19 Reply briefs would be due Monday,

20 June 2nd, 2008.

21 The parties, including Staff, would

22 submit proposed decisions to yourself on Monday, June

1 9th, 2008, and presumably file them on e-Docket as  
2 well.

3 Your ALJ proposed decision would be  
4 expected on Monday, June 30th, 2008.

5 And 14 days thereafter, any  
6 applications for Commission review would be expected,  
7 that's Monday, July 14th, 2008.

8 7 days thereafter, Monday, July 21,  
9 2008, replies to applications for review would be  
10 expected.

11 We're expecting -- and, as I said,  
12 waiving Section 13-515(d) of the Public Utilities Act  
13 to the extent the Commission order would be due on or  
14 before Wednesday, July 30th, 2008.

15 JUDGE DOLAN: Just for clarification on our  
16 end, applications for Commission review, is that the  
17 same as briefs on exceptions --

18 MR. HARVEY: For practical purposes, your  
19 Honor, except they don't really have to conform with  
20 the rules governing briefs on exceptions --

21 JUDGE DOLAN: This goes strictly to the  
22 Commission then?

1           MR. HARVEY: It goes strictly to the  
2 Commission, yeah.

3           MR. RASHES: Right, your Honor. And this is --  
4 that language is from 13-515.

5           JUDGE DOLAN: That's what I thought. Okay.  
6 All right. Then --

7           [!EZ SPEAKER 02]: Says any party may file a  
8 petition requesting the Commission to review the  
9 decision of the hearing examiner for arbitration.

10          JUDGE DOLAN: Which -- okay.

11                   All right. Then with that, is there  
12 anything else then to come before the Commission in  
13 this matter?

14                   Then this matter will be marked heard  
15 and taken.

16                                   (Heard and taken.)

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